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1976 EDITION

CONTAINING THE GENERAL AND PERMANENT LAWS
OF THE UNITED STATES, IN FORCE
ON JANUARY 3, 1977

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VOLUME NINE

TITLE 32—NATIONAL GUARD
TO
TITLE 41—PUBLIC CONTRACTS

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TITLES OF UNITED STATES CODE

*1. General Provisions.
2. The Congress.
*3. The President.
*4. Flag and Seal, Seat of Government, and the States.
*5. Government Organization and Employees.
*6. Surety Bonds.
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*This title has been enacted as law.
†This title has been eliminated by the enactment of Title 10.

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PREFACE—1976 EDITION

This ninth edition of the United States Code was prepared and published pursuant to section 285b of Title 2 of the Code. It contains a consolidation and codification of all the general and permanent laws of the United States which are in force on January 3, 1977. By statutory authority this edition may be cited "U.S.C. 1976 ed." Previous editions were published in 1926, 1934, 1940, 1946, 1952, 1958, 1964, and 1970.

Inasmuch as many of the general and permanent laws which are required to be incorporated in this Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel is engaged in a comprehensive project of revising and enacting the Code into law, title by title. Since 1947, bills have been enacted to revise, codify and enact into law Titles 1, 3, 4, 5, 6, 9, 10, 13, 14, 17, 18, 23, 28, 32, 35, 37, 38, 39, and 44. In addition, bills relating to other titles are also being prepared for introduction. When this work is completed all the titles of the Code will be legal evidence of the general and permanent law and recourse to the numerous volumes of the Statutes at Large for this purpose will be unnecessary.

The title and chapter structure of the 1970 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1970.

This edition continues the practice of setting out notes captioned "Section referred to in other sections". These notes have been inserted following each section that is referred to in the text of another section, indicating the section that contains the internal reference. In addition, there is included in this edition, for the first time, a comprehensive Table of Internal References which appears in the Tables volume. This Table consolidates all internal references contained in the individual "Section referred to in other sections" notes.

This edition has been prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company, of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made of the cooperation by all who have helped in this work, particularly by the staffs of the publishing company and of the Office of the Law Revision Counsel, and by the Government Printing Office.

Thomas P. O'Neill Jr. M.C.

Speaker of the House of Representatives

WASHINGTON, D.C., *January 4, 1977.*

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This title was enacted by act Aug. 10, 1956, ch. 1041, § 2, 70A Stat. 596

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174	See Title 10, §§ 3541, 8541.
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181a	See Title 10, § 4312.
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POSITIVE LAW; CITATION

This title has been made positive law by section 2 of act Aug. 10, 1956, ch. 1041, 70A Stat. 596, which provided in part that: "Title 32 of the United States Code, entitled 'National Guard', is revised, codified, and enacted into law, and may be cited as 'Title 32, United States Code, § —.'"

REPEALS

Section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641, repealed the sections or parts of sections of the

Revised Statutes or Statutes at Large covering provisions codified in this act, "except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this act [Aug. 10, 1956] and except as provided in section 49".

SAVINGS AND SEVERABILITY PROVISIONS

Act Aug. 10, 1956, ch. 1041, § 49, 70A Stat. 640, provided that:

"(a) In sections 1-48 of this Act, it is the legislative purpose to restate, without substantive change, the law replaced by those sections on the effective date of this Act. However, laws effective after March 31, 1955, that are inconsistent with this Act shall be considered as superseding it to the extent of the inconsistency.

"(b) References that other laws, regulations, and orders make to the replaced law shall be considered to be made to the corresponding provisions of sections 1-48.

"(c) Actions taken and offenses committed under the replaced law shall be considered to have been taken or committed under the corresponding provisions of sections 1-48.

"(d) If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

"(e) In chapter 47 of title 10, United States Code, enacted by section 1 of this Act, no inference of a legislative construction is to be drawn from the part in which any article is placed nor from the catchlines of the part or the article as set out in that chapter.

"(f) The enactment of this Act does not increase or decrease the pay or allowances, including retired pay and retainer pay, of any person.

"(g) The enactment of this Act does not affect the status of persons who, on the effective date of this Act, have the status of warrant officer, of the Army Mine Planter Service."

RESTATEMENT OF SUSPENDED OR TEMPORARILY SUPERSEDED PROVISIONS

Act Aug. 10, 1956, ch. 1041, § 50, 70A Stat. 640, provided that: "If on the effective date of this Act a provision of law that is restated in this Act and repealed by section 53 would have been in a suspended or temporarily superseded status but for its repeal, the provisions of this Act that restate that provision have the same suspended or temporarily superseded status."

CHAPTER 1—ORGANIZATION

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101. Definitions.
102. General policy.
103. Branches and organizations.
104. Units: location; organization; command.
105. Inspection.
106. Annual appropriations.
107. Availability of appropriations.
108. Forfeiture of Federal benefits.
109. Maintenance of other troops.
110. Regulations.
111. Suspension of certain provisions of this title.

AMENDMENTS

1971—Pub. L. 92-119, § 1(b), Aug. 13, 1971, 85 Stat. 340, substituted in item 107 "Availability" for "Apportionment".

1958—Pub. L. 85-861, § 2(4), Sept. 2, 1958, 72 Stat. 1543, added item 111.

CROSS REFERENCES

Army National Guard of United States and Air National Guard of United States—
Active Federal service, see sections 3495 and 8495 of Title 10, Armed Forces.
Component of Army and Air Force, see sections 3078 and 8078 of Title 10.
Composition, see sections 3077 and 8077 of Title 10.
Enlistment, see sections 510, 3261 and 8261 of Title 10.
Inactive status of reserves assigned to inactive Army National Guard or inactive Air National Guard, see section 267 of Title 10.
Officers, discharge, see sections 3820 and 8820 of Title 10.
Ready Reserve as including units and members of, see section 269 of Title 10.
Reserve components, see section 261 of Title 10.
Reserve Forces Policy Board membership to include two members each from, see section 175 of Title 10.
Status when not in Federal service, see sections 3079 and 8079 of Title 10.
Strength, see sections 3224 and 8224 of Title 10.
Transfer of members from Ready Reserve to Standby Reserve, see section 269 of Title 10.
Transfer of members to Army Reserve or Air Force Reserve, see sections 3259, 3352, 8259 and 8352 of Title 10.

Insurrection, see section 331 et seq. of Title 10.

National Guard Bureau—
Assignment of regular or reserve officers of Army or Air Force, see sections 3541 and 8541 of Title 10.
Chief, appointment; acting chief, see section 3015 of Title 10.
Commissioned officers of Army National Guard of United States and Air National Guard of United States, duty in Bureau, see sections 3496 and 8496 of Title 10.
Functions with respect to Air National Guard, see section 8033 of Title 10.

Organized militia as including the National Guard, see section 311 of Title 10.

Policies and regulations for government of Army National Guard of United States and Army National Guard, Air National Guard of United States and Air National Guard, see sections 3033 and 8033 of Title 10.

Reserve components, standards and procedures for retention and promotion, see section 1001 et seq. of Title 10.

§ 101. Definitions

In addition to the definitions in sections 1-5 of title 1, the following definitions apply in this title:

(1) "Territory" means any Territory organized after this title is enacted, so long as it remains a Territory. However, for purposes of this title and other laws relating to the militia, the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States, "Territory" includes the Virgin Islands.

(2) "Armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(3) "National Guard" means the Army National Guard and the Air National Guard.

(4) "Army National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia, active and inactive, that—

(A) is a land force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(5) "Army National Guard of the United States" means the reserve component of the Army all of whose members are members of the Army National Guard.

(6) "Air National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia, active and inactive, that—

(A) is an air force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(7) "Air National Guard of the United States" means the reserve component of the Air Force all of whose members are members of the Air National Guard.

(8) "Officer" means commissioned or warrant officer.

(9) "Enlisted member" means a person enlisted in, or inducted, called, or conscripted into, an armed force in an enlisted grade.

(10) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(11) "Rank" means the order of precedence among members of the armed forces.

(12) "Active duty" means full-time duty in the active military service of the United States. It includes such Federal duty as duty on the active list, full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(13) "Supplies" includes material, equipment, and stores of all kinds.

(14) "Shall" is used in an imperative sense.

(15) "May" is used in a permissive sense. The words "no person may * * *" mean that no person is required, authorized, or permitted to do the act prescribed.

(16) "Includes" means "includes but is not limited to".

(17) "Pay" includes basic pay, special pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(18) "Spouse" means husband or wife, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 596; Sept. 2, 1958, Pub. L. 85-861, § 2(1), 72 Stat. 1542; June 25, 1959, Pub. L. 86-70, § 27, 73 Stat. 148; July 12, 1960, Pub. L. 86-624, § 22, 74 Stat. 417; Oct. 13, 1972, Pub. L. 92-492, § 2(a), 86 Stat. 810.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
101(1)	32:4c (1st 33 words).	June 3, 1916, ch. 134,
101(2)	[No source].	§ 62 (1st 36 words of
101(3)	32:2.	last proviso), 39 Stat.
	32:4b.	198.
101(4)	50:1112(a) (for definition purposes).	June 3, 1916, ch. 134, § 117, 39 Stat. 212.
101(5)	10:1835 (less last 16 words).	June 3, 1916, ch. 134, § 71; added June 15,
	32:2.	1933, ch. 87, § 9, 48
101(6)	32:4b.	Stat. 157; Oct. 12,
	50:1112(b) (for definition purposes).	1949, ch. 681, § 530, 63 Stat. 837; July 9, 1952,
101(7)	[No source].	ch. 608, § 803 (9th
101(8)	[No source].	par.), 66 Stat. 505.
101(9)	[No source].	July 9, 1952, ch. 608,
101(10)	[No source].	§ 702 (for definition
101(11)	[No source].	purposes), 66 Stat.
101(12)	[No source].	501.
101(13)	[No source].	Sept. 19, 1951, ch. 407,
101(14)	[No source].	§ 305 (less last 16
101(15)	[No source].	words), 65 Stat. 330.
101(16)	[No source].	

The definitions in clauses (2) and (9)–(17) reflect the adoption of terminology which, though undefined in the source statutes restated in this title, represent the closest practicable approximation of the ways in which the terms defined have been most commonly used. Where established uses conflict, a choice has been made.

In clause (1), the definition of "Territory" in 32:4c is executed throughout this revised title by specific reference, where applicable, to the Territories, Puerto Rico, and the Canal Zone.

In clause (2), a definition of "National Guard" is inserted for clarity.

In clause (3)(A), the words "a land force" are substituted for 32:2. The National Defense Act of 1916, § 117 (last 66 words), 39 Stat. 212, is not contained in 32:2. It is also omitted from the revised section as repealed by the act of February 28, 1925, ch. 374, § 3, 43 Stat. 1081.

In clauses (3) and (4), the word "Army" is inserted to distinguish the organizations defined from their Air Force counterparts.

In clauses (3) and (5), the words "unless the context or subject matter otherwise requires—" and "as provided in this title", in 32:4b, are omitted as surplusage.

In clauses (3)(B) and (5)(B), the words "has its officers appointed" are substituted for the word "officered", in 32:4b.

In clauses (4) and (6), only that much of the description of the composition of the Army National Guard of the United States and the Air National Guard of the United States is used as is necessary to distinguish these reserve components, respectively, from the other reserve components.

In clause (5)(A), the words "an air force" are substituted for the words "for which Federal responsibility has been vested in the Secretary of the Air Force or the Department of the Air Force pursuant to law", in 10:1835, and for 32:2 (less applicability to Army National Guard), to make the definition of "Air National Guard" parallel with the definition of "Army National Guard", and to make explicit the intent of Congress in creating the Air National Guard, that the organized militia henceforth should consist of three mutually exhaustive classes comprising the Army, Air, and Naval militia.

In clause (8), words showing how enlisted members became such are inserted to make clear that enlistment is not the only method of becoming a member in an enlisted grade.

1958 ACT

Section of title 32	Source (U.S. Code)	Source (Statutes at Large)
101(2).....	[No source].	[No source].
101(18).....	[No source].	[No source].

In clause (2), the term "armed forces" is defined for legislative convenience and is defined the same as that term is defined in section 101(4) of title 10, United States Code.

The definition in clause (18) reflects the adoption of terminology which, though undefined in the source statutes restated in this title, represents the closest practicable approximation of the ways in which the term has been commonly used.

AMENDMENTS

1972—Cl. (1). Pub. L. 92-492 added provision including within the term "Territory" for the purposes of this title and other laws relating to the militia, the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States, the Virgin Islands.

1960—Pub. L. 86-624 eliminated Hawaii from cl. (1).

1959—Pub. L. 86-70 eliminated Alaska from cl. (1).

1958—Pub. L. 85-861 added clauses (2) and (18) and renumbered former clauses (2) to (16) as (3) to (17), respectively.

SAVINGS AND SEVERABILITY PROVISIONS

Section 34 of Pub. L. 85-861, provided that:

"(a) In sections 1-32 of this Act, it is the legislative purpose to restate, without substantive change, the law replaced by those sections on the effective date of this Act. However, laws effective after December 31, 1957, that are inconsistent with this Act shall be considered as superseding it to the extent of the inconsistency.

"(b) References that other laws, regulations, and orders make to the replaced law shall be considered to be made to the corresponding provisions of sections 1-32.

"(c) Actions taken under the replaced law shall be considered to have been taken under the corresponding provisions of sections 1-32.

"(d) If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

"(e) The enactment of this Act does not increase or decrease the pay or allowances, including retired and retainer pay, of any person."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6323; title 10 section 101.

§ 102. General policy

In accordance with the traditional military policy of the United States, it is essential that the strength and organization of the Army National Guard and the Air National Guard as an integral part of the first line defenses of the United States be maintained and assured at all times. Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with such units of other reserve components as are necessary for a balanced force, shall be ordered to active Federal duty and retained as long as so needed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 597.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
102.....	50:921(b).	July 9, 1952, ch. 608, § 201(b), 66 Stat. 482.

The words "The Congress further declares * * * as expressed in the National Defense Act of 1916 as amended" and "It is the intent of Congress that" are omitted as surplusage. The words "United States" are substituted for the words "our" and "this Nation". The words "more * * * than are in" are substituted for the words "in excess of those". The words "Federal duty" are substituted for the words "military service of the United States". The words "as long as so needed" are substituted for the words "so long as such necessity exists".

CROSS REFERENCES

Active duty of reserve components generally, see section 672 of Title 10, Armed Forces.

Active Federal service, see sections 3495 and 8495 of Title 10.

Basic policy for order into Federal service, see section 263 of Title 10.

Call into Federal service, see sections 3500 and 8500 of Title 10.

Insurrection, see section 331 et seq. of Title 10.

Reserve components, see section 261 et seq. of Title 10.

§ 103. Branches and organizations

The Army National Guard of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia includes such members of the staff corps corresponding to the staff corps of the Army as the Secretary of the Army may authorize.

(Aug. 10, 1956, ch. 1041, 70A Stat. 597.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
103.....	32:9.	July 9, 1918, ch. 143 (proviso of 13th par. under "National Guard"), 40 Stat. 875.

The word "members" is substituted for the words "officers and enlisted men". The word "Regular" is omitted, since the organization is now prescribed for the Army, and the Regular Army is only a personnel category.

CROSS REFERENCES

Appointment of National Guard officers as Reserve officers upon Federal recognition, see sections 3351 and 8351 of Title 10, Armed Forces.

Army Staff, see section 3031 et seq. of Title 10.

§ 104. Units: location; organization; command

(a) Each State and Territory, Puerto Rico, and the Canal Zone may fix the location of the units and headquarters of its National Guard.

(b) Except as otherwise specifically provided in this title, the organization of the Army National Guard and the composition of its units

shall be the same as those prescribed for the Army, subject, in time of peace, to such general exceptions as the Secretary of the Army may authorize; and the organization of the Air National Guard and the composition of its units shall be the same as those prescribed for the Air Force, subject, in time of peace, to such general exceptions as the Secretary of the Air Force may authorize.

(c) To secure a force the units of which when combined will form complete higher tactical units, the President may designate the units of the National Guard, by branch of the Army or organization of the Air Force, to be maintained in each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia. However, no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor.

(d) To maintain appropriate organization and to assist in training and instruction, the President may assign the National Guard to divisions, wings, and other tactical units, and may detail commissioned officers of the National Guard or of the Regular Army or the Regular Air Force, as the case may be, to command those units. However, the commanding officer of a unit organized wholly within a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia may not be displaced under this subsection.

(e) To insure prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail a commissioned officer of the Regular Army to perform the duties of chief of staff for each fully organized division of the Army National Guard, and a commissioned officer of the Regular Air Force to perform the duties of the corresponding position for each fully organized wing of the Air National Guard.

(f) Unless the President consents—

(1) an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded; and

(2) the actual strength of such an organization in commissioned officers or enlisted members may not be reduced below the minimum strength prescribed by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 598.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
104(a)	32:6.	June 3, 1916, ch. 134, §§ 64, 65 (proviso), 68, 39 Stat. 198–200.
104(b)	32:5 (1st sentence).	
104(c)	32:5 (less 1st sentence).	
104(d)	32:8.	
104(e)	32:10 (proviso).	June 3, 1916, ch. 134, § 60; June 4, 1920, ch. 227 subch. I, § 36; restated June 15, 1933, ch. 87, § 6, 48 Stat. 156.
104(f)	32:16.	

In subsection (a), the words "within their respective borders" are omitted as surplusage.

In subsection (b), the word "Army" is substituted for the words "Regular Army", since the Army is the category for which the organization is prescribed, and the Regular Army is a personnel category for which no organization is prescribed. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

In subsection (c), the words "by branch of the Army or organization of the Air Force" are substituted for the words "as to branch or arm of service". The words "branch, organization, or allotment of a unit" are substituted for the words "allotment, branch, or arm of units or organizations".

In subsections (d) and (e) the word "commissioned" is inserted, since 32:8 and 10 historically applied only to commissioned officers (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)).

In subsection (d), the word "brigades" is omitted as surplusage.

In subsection (e), the word "tactical" is omitted as surplusage.

In subsection (f), the words "have received compensation from the United States as members of the National Guard" are substituted for the words "shall be entitled to and shall have received compensation under the provisions of this title". The words "actual strength * * * in commissioned officers or enlisted members" are substituted for the words "commissioned or enlisted strength".

RETENTION OF ANCIENT PRIVILEGES AND ORGANIZATION

Section 32 of act Aug. 10, 1956, provided that:

"(a) Any corps of artillery, cavalry, or infantry existing in any of the States on the passage of the Act of May 8, 1792, which by the laws, customs, or usages of those States has been in continuous existence since the passage of that Act, shall be allowed to retain its ancient privileges, subject, nevertheless to all duties required by law of militia: *Provided*, That those organizations may be a part of the National Guard and entitled to all the privileges thereof, and shall conform in all respects to the organization, discipline, and training to the National Guard in time of war: *Provided further*, That for purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the President may direct, and shall be subject to the orders of officers under whom they shall be serving.

"(b) The First Corps Cadets, antedating, and continuously existing in the State of Massachusetts since, the Act of May 8, 1792, now designated as the 126th Tank Battalion, 26th Infantry Division, hereby declared to be a corps as defined in subsection (a) of this Act for all purposes thereof and now incorporated in the Organized Militia and a part of the National Guard of Massachusetts, shall be allowed to retain its ancient privileges and organization. The First Corps Cadets is hereby declared to be entitled to a lieutenant colonel in command and a major second in command; and those officers, when federally recognized, are entitled to the pay provided by law for their respective grades: *Provided*, That nothing in this section or other provisions of law shall be considered to be in derogation of any other ancient privileges to which the First Corps Cadets is entitled under the laws, customs, or usages of the State of Massachusetts."

CROSS REFERENCES

Army Staff and Air Staff, see sections 3031 et seq. and 8031 et seq. of Title 10, Armed Forces.

Chief and assistant chief of staff of divisions of Army National Guard in Federal service, detail, see section 3542 of Title 10.

Chief and assistant chief of staff of wings of Air National Guard in Federal service, detail, see section 8542 of Title 10.

Limitation on relocation of units, see section 2238 of Title 10.

Policies and regulations for government of reserve components of Army and Air Force, see sections 3033 and 8033 of Title 10.

§ 105. Inspection

(a) The Secretary of the Army shall have an inspection made at least once a year by inspectors general, or, if necessary, by any other commissioned officers of the Regular Army detailed for that purpose, to determine whether—

(1) the amount and condition of property held by the Army National Guard are satisfactory;

(2) the Army National Guard is organized as provided in this title;

(3) the members of the Army National Guard meet prescribed physical and other qualifications;

(4) the Army National Guard and its organization are properly uniformed, armed, and equipped and are being trained and instructed for active duty in the field, or for coast defense; and

(5) Army National Guard records are being kept in accordance with this title.

The Secretary of the Air Force has a similar duty with respect to the Air National Guard.

(b) The reports of inspections under subsection (a) are the basis for determining whether the National Guard is entitled to the issue of military property as authorized under this title and to retain that property; and for determining which organizations and persons constitute units and members of the National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 598.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
105(a)	32:15 (1st sentence).	June 3, 1916, ch. 134,
105(b)	32:15 (less 1st sentence).	§ 93, 39 Stat. 206.

In subsection (a), the word "commissioned" is inserted, since 32:15 historically applied only to commissioned officers (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)).

In subsection (a)(2), the words "provided in this title" are substituted for the words "hereinbefore prescribed".

In subsection (a)(4), the words "the Army National Guard and its organizations" are substituted for the words "the organization and the officers and enlisted men thereof". The word "uniformed" is omitted as covered by the word "equipped".

In subsection (b), the words "under subsection (a)" are substituted for the word "such". The words "units and members" are substituted for the word "parts". The words "within the meaning of this title" are omitted as surplusage.

§ 106. Annual appropriations

Sums will be appropriated annually, out of any money in the Treasury not otherwise appropriated, for the support of the Army National Guard and the Air National Guard, including the issue of arms, ordnance stores, quartermaster stores, camp equipage, and other military supplies, and for the payment of other expenses authorized by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 599.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
106	32:21.	June 3, 1916, ch. 134, § 67 (1st par.), 39 Stat. 199.

The words "issue of" are substituted for the words "the expense of providing". The words "for issue to the National Guard" and "pertaining to said guard as are or may be" are omitted as surplusage.

CROSS REFERENCES

Supplies, services, and facilities, issuance to reserve components, see section 2511 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 107 of this title; title 10 section 2511.

§ 107. Availability of appropriations

(a) Under such regulations as the Secretary concerned may prescribe, appropriations for the National Guard are available for—

(1) the necessary expenses of members of a regular or reserve component of the Army or the Air Force traveling on duty in connection with the National Guard;

(2) the necessary expenses of officers of the Regular Army or the Regular Air Force on duty in the National Guard Bureau or with the Army General Staff or the Air Staff, traveling to and from annual conventions of the National Guard Association of the United States or the Adjutants General Association;

(3) the transportation of supplies furnished to the National Guard as permanent equipment;

(4) the office rent and necessary office expenses of officers of a regular or reserve component of the Army or the Air Force on duty with the National Guard;

(5) the expenses of the National Guard Bureau, including clerical services;

(6) the promotion of rifle practice, including the acquisition, construction, maintenance, and equipment of shooting galleries and suitable target ranges;

(7) such incidental expenses of authorized encampments, maneuvers, and field instruction as the Secretary considers necessary; and

(8) other expenses of the National Guard authorized by law.

(b) The expenses of enlisted members of the Regular Army or the Regular Air Force on duty with the National Guard shall be paid from appropriations for the Army National Guard or the Air National Guard, as the case may be, but not from the allotment of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia. Payable expenses include allowances for subsistence and quarters under sections 402 and 403 of title 37 and expenses for medicine and medical attendance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 599; Sept. 11, 1967, Pub. L. 90-83, § 4, 81 Stat. 220; Aug. 13, 1971, Pub. L. 92-119, § 1(a), 85 Stat. 340.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
107(a)	32:22 (less proviso).	June 3, 1916, ch. 134, § 67 (2d par.), 39 Stat. 199; Sept. 22, 1922, ch. 423, § 3, 42 Stat. 1034; Apr. 6, 1926, ch. 321, 45 Stat. 406.
107(b)	32:22 (proviso, less words between 5th and 7th semicolons).	
107(c)	32:22 (words between 5th and 7th semicolons of proviso).	

In subsection (a), the words "strengths in enlisted members of the active" are substituted for the words "number of enlisted men in active service". The words between the eighth and ninth semicolons of 32:22, relating to horses and draft animals, are omitted as obsolete, since no animals are now authorized for the National Guard. The words "under section 106 of this title" are inserted, since only appropriations under that revised section are required to be apportioned.

In subsection (b)(1) and (2), the words "actual and" are omitted as surplusage.

In subsection (b)(2), the words "Reserve Officers holding commission in the National Guard" are omitted as covered by the words "officers of a * * * reserve component of the Army or the Air Force". The words "Army General Staff" are substituted for the words "War Department General Staff" to conform to section 3031(b) of title 10.

In subsection (c), the words "under sections 251 and 252 of title 37" are substituted for the words "provided in section 19 of title 37", since allowances for subsistence and quarters are now covered by those sections. The words "shall be paid from appropriations for the National Guard, but not from the allotment of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia" are substituted for the words "shall constitute a charge against the whole sum annually appropriated for the support of the National Guard, and shall be paid therefrom and not from the allotment duly apportioned for any particular State, Territory, or the District of Columbia".

AMENDMENTS

1971—Pub. L. 92-119, § 1(a)(1), substituted "Availability" for "Apportionment" in the catchline.

Subsec. (a). Pub. L. 92-119, § 1(a)(2), (3), (4), redesignated former subsec. (b) as subsec. (a), and in subsec. (a) as so redesignated, substituted "appropriation for the National Guard" for "apportioned appropriation". Former subsec. (a), which provided for the apportionment of appropriations for the Army National Guard and Air National Guard under prescribed formulas among the states, territories, Puerto Rico, the Canal Zone, District of Columbia, was stricken.

Subsec. (b). Pub. L. 92-119, § 1(a)(4), redesignated former subsec. (c) as subsec. (b). Former subsec. (b) redesignated subsec. (a) and amended.

Subsec. (c). Pub. L. 92-119, § 1(a)(4), redesignated former subsec. (c) as subsec. (b).

1967—Subsec. (c). Pub. L. 90-83 substituted "402 and 403" for "251 and 252".

CROSS REFERENCES

National Guard Bureau, assignment of regular or reserve officers of Army or Air Force, see sections 3541 and 8541 of Title 10, Armed Forces.

Supplies, services, and facilities, issuance to reserve components, see section 2511 of Title 10.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2511.

§ 108. Forfeiture of Federal benefits

If, within a time to be fixed by the President, a State does not comply with or enforce a requirement of, or regulation prescribed under, this title its National Guard is barred, wholly or partly as the President may prescribe, from receiving money or any other aid, benefit, or privilege authorized by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 600.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
108	32:24.	June 3, 1916, ch. 134, § 116, 39 Stat. 212.

The words "does not comply" are substituted for the words "shall * * * have failed or refused to comply". The words "a requirement of, or regulation prescribed under, this title" are substituted for the words "any requirement of this title, or any regulation promulgated thereunder and in aid thereof by the President or the Secretary of the Army". The words "money or any other aid" are substituted for the words "pecuniary or other aid". The words "or provided by this title or any other" are omitted as surplusage.

§ 109. Maintenance of other troops

(a) In time of peace, a State or Territory, Puerto Rico, the Virgin Islands, the Canal Zone, or the District of Columbia may maintain no troops other than those of its National Guard and defense forces authorized by subsection (c).

(b) Nothing in this title limits the right of a State or Territory, Puerto Rico, the Virgin Islands, the Canal Zone, or the District of Columbia to use its National Guard or its defense forces authorized by subsection (c) within its borders in time of peace, or prevents it from organizing and maintaining police or constabulary.

(c) In addition to its National Guard, if any, a State or Territory, Puerto Rico, the Virgin Islands, the Canal Zone, or the District of Columbia may, as provided by its laws, organize and maintain defense forces. A defense force established under this section may be used within the jurisdiction concerned, as its chief executive (or commanding general in the case of the District of Columbia) considers necessary, but it may not be called, ordered, or drafted into the armed forces.

(d) A member of a defense force established under subsection (c) is not, because of that membership, exempt from service in the armed forces, nor is he entitled to pay, allowances, subsistence, transportation, or medical care or treatment, from funds of the United States.

(e) A person may not become a member of a defense force established under subsection (c) if he is a member of a reserve component of the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 600; Sept. 2, 1958, Pub. L. 85-861, § 2(2), 72 Stat. 1542.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
109(a)	32:194(a) (1st sentence). 32:194(c) (as applicable to 32:194(a) (1st sentence)).	June 3, 1916, ch. 134, § 61 (less (b)); restated Oct. 21, 1940, ch. 904 (less last 3 provisos); restated Aug. 18, 1941, ch. 363 (less last 3 provisos); restated Oct. 1, 1942, ch. 570 (less (b)); restated June 26, 1944, ch. 279 (less (b)); restated Sept. 27, 1950, ch. 1058 (less (b)), 64 Stat. 1072.
109(b)	32:194(a) (less 1st sentence). 32:194(c) (less applicability to 32:194(a) (1st sentence)).	

In subsection (a), the words "those of its National Guard" are substituted for the words "as authorized in accordance with the organization prescribed under this Act".

In subsections (a) and (b), the provisions of 32:194(c) are exhausted by the enumeration of the jurisdictions named.

In subsection (b), the words "Nothing in this title limits" are substituted for the words "Nothing contained in this Act shall be construed to limit".

1958 ACT

Section of title 32	Source (U.S. Code)	Source (Statutes at Large)
109(c)	32 App.:194(b) (less 4th and last sentences).	Aug. 11, 1955, ch. 802, 69 Stat. 686.
109(d)	32 App.:194(b) (4th sentence).	
109(e)	32 App.:194(b) (last sentence).	

In subsection (c), the words "heretofore authorized by this Act [sic]", "as such", and "in any manner" are omitted as surplusage.

In subsection (d), the words "under any Federal law" are omitted since only Federal law could require service in the armed forces. The word "military" is omitted as surplusage.

In subsection (e), the words "defense force" are substituted for the words "organized militia" for accuracy and to conform to subsection (c). The words "reserve component of the armed forces" are substituted for the words "Reserve Forces as defined in section 901 of Title 50", since that term is not defined in the Armed Forces Reserve Act of 1952.

AMENDMENTS

1958—Subsecs. (a) and (b). Pub. L. 85-861, § 2(2)(A), substituted "defense forces authorized by subsection (c)" for "State defense forces".

Subsecs. (c) to (e). Pub. L. 85-861, § 2(2)(B) added subsecs. (c) to (e).

§ 110. Regulations

The President shall prescribe regulations, and issue orders, necessary to organize, discipline, and govern the National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 600.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
110	32:17.	June 3, 1916, ch. 134, § 118, 39 Stat. 213.

The word "rules" is omitted as covered by the word "regulations". The words "National Guard" are substituted for the words "the militia provided for in this title". The words "for the thorough" are omitted as surplusage.

§ 111. Suspension of certain provisions of this title

In time of war, or of emergency declared by Congress, the President may suspend the operation of any provision of sections 307(e), 309, 310, and 323(d) and (e) of this title with respect to the Army National Guard or the Air National Guard.

(Added Pub. L. 85-861, § 2(3), Sept. 2, 1958, 72 Stat. 1543.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
111	50:1199 (as applicable to National Guard).	Sept. 3, 1954, ch. 1257, § 209 (as applicable to National Guard), 68 Stat. 1152.

Reference to the exception in section 307(a) is omitted as unnecessary because a suspension of section 307(e) of this title, or of section 8365 or 8366 of Title 10, will in effect suspend that exception so far as it refers to the suspended section. A reference to the remainder of section 307(a) is omitted as unnecessary because the general rule that it states exists independently of that part of the source law for section 307(a) that is suspendible under this section. A reference to section 307(f) is omitted as unnecessary because a suspension of section 307(e) will in effect suspend section 307(f) so far as it applies to section 307(e). 50:1199 (2d sentence) is omitted as inapplicable to the National Guard.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(11) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

CHAPTER 3—PERSONNEL

Sec.
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AMENDMENTS

1976—Pub. L. 94-464, § 2(c), Oct. 8, 1976, 90 Stat. 1988, added item 334.

1961—Pub. L. 87-378, § 5(2), Oct. 4, 1961, 75 Stat. 808, amended item 302 by inserting ", reenlistments, and extensions".

1958—Pub. L. 85-861, § 2(8), Sept. 2, 1958, 72 Stat. 1544, added items 309 and 310.

CROSS REFERENCES

Active Federal status, see sections 3495 and 8495 of Title 10, Armed Forces.

Appointments as reserve officers, see section 591 et seq., 3351 et seq., and 8351 et seq. of Title 10.

Army National Guard and Air National Guard in Federal service, call, see sections 3500 and 8500 of Title 10.

Army Reserve or Air Force Reserve—

Transfer from Army National Guard of United States or Air National Guard of United States to, see sections 3259, 3352, 8259 and 8352 of Title 10.

Transfer to upon withdrawal as member of Army National Guard or Air National Guard, see sections 3260 and 8260 of Title 10.

Basic policy for order of Army National Guard of the United States and Air National Guard of the United States into Federal service, see section 263 of Title 10.

Pay and allowances generally, see Title 37, Pay and Allowances of the Uniformed Services.

Reserve components: detail of members of regular and reserve components to assist, see section 715 of Title 10, Armed Forces.

Status when not in Federal service, see sections 3079 and 8079 of Title 10.

Uniform, when wearing by persons not on active duty authorized, see section 772 of Title 10.

§ 301. Federal recognition of enlisted members

To be eligible for Federal recognition as an enlisted member of the National Guard, a person must have the qualifications prescribed by the Secretary concerned for the grade, branch, position, and type of unit or organization involved. He becomes federally recognized upon enlisting in a federally recognized unit or organization of the National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 601.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
301	50:1113(a) (as applicable to enlisted members).	July 9, 1952, ch. 608, § 703(a) (as applicable to enlisted members), 66 Stat. 502.

CROSS REFERENCES

Withdrawal of Federal recognition, see section 323 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 323 of this title.

§ 302. Enlistments, reenlistments, and extensions

(a) Under regulations to be prescribed by the Secretary concerned, original enlistments in the National Guard may be accepted for—

(1) any specified term, not less than three years, for persons who have not served in an armed force; or

(2) any specified term, not less than one year, for persons who have served in any armed force.

(b) Under regulations to be prescribed by the Secretary concerned, reenlistment in the National Guard may be accepted for any specified period, or, if the person last served in one of the highest five enlisted grades, for an unspecified period.

(c) Enlistments or reenlistments in the National Guard may be extended—

(1) under regulations to be prescribed by the Secretary concerned, at the request of the member, for any period not less than six months; or

(2) by proclamation of the President, if Congress declares an emergency, until six months after termination of that emergency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 601; Oct. 4, 1961, Pub. L. 87-378, § 5(1), 75 Stat. 808.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
302	32:124.	June 3, 1916, ch. 134, § 69; restated July 11, 1919, ch. 8 (20th par. under "National Guard"); restated June 4, 1920, ch. 227, subch. I, § 37; restated June 6, 1924, ch. 275, § 4; restated June 15, 1933, ch. 87, § 7, 48 Stat. 156; July 9, 1952, ch. 608, § 606(a), 66 Stat. 506.

32:124 (1st proviso) is omitted as executed. The word "reenlistments" is substituted for the words "subsequent enlistments".

AMENDMENTS

1961—Pub. L. 87-378 permitted original enlistments for any specified term, not less than three years, for persons who have not served in an armed force, authorized reenlistments for any specified period, or if the person last served in one of the highest five enlisted grades, for an unspecified period, extensions of enlistments or reenlistments at the request of the member for any period not less than six months after termination of the emergency.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-378 not effective with respect to any enlistment, reenlistment, or appointment entered into or made before Oct. 4, 1961, see section 6 of Pub. L. 87-378, set out as an Effective Date of 1961 Amendment note under section 3261 of Title 10, Armed Forces.

CROSS REFERENCES

Army National Guard of United States and Air National Guard of United States, see sections 3261 and 8261 of Title 10, Armed Forces.

Service extension during war of members of Army and Air Force, see sections 3492 and 8492 of Title 10.

§ 303. Active and inactive enlistments and transfers

(a) Under regulations to be prescribed by the Secretary of the Army, a person qualified for enlistment in the active Army National Guard may be enlisted in the inactive Army National Guard for a single term of one or three years. Under regulations prescribed by the Secretary of the Air Force, a person qualified for enlistment in the active Air National Guard may be enlisted in the inactive Air National Guard for a single term of one or three years.

(b) Under such regulations as the Secretary of the Army may prescribe, an enlisted member of the active Army National Guard, not formerly enlisted in the inactive Army National Guard, may be transferred to the inactive Army National Guard. Under such regulations as the Secretary of the Air Force may prescribe, an enlisted member of the active Air National Guard, not formerly enlisted in the inactive Air National Guard, may be transferred to the inactive Air National Guard. Under such regulations as the Secretary concerned may prescribe, a person enlisted in or transferred to the inactive Army National Guard or the inactive Air National Guard may be transferred to the active Army National Guard or the active Air National Guard, as the case may be.

[(c) Repealed. Pub. L. 87-649, § 14e(1), Sept. 7, 1962, 76 Stat. 502.]

(d) In time of peace, no enlisted member may be required to serve for a period longer than that for which he enlisted in the active or inactive National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 601; Sept. 7, 1962, Pub. L. 87-649, § 14e(1), 76 Stat. 502.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
303(a).....	32:132.	June 3, 1916, ch. 134, § 78 (1st and 2d sentences); restated June 4, 1920, ch. 227, subch. I, § 42 (less provisos); restated Feb. 28, 1925, ch. 371, § 2 (1st and 2d sentences); restated June 15, 1933, ch. 87, § 15 (1st and 2d sentences), 48 Stat. 159; July 9, 1952, ch. 608, § 806(f), 66 Stat. 507.
303(b).....	32:133 (less proviso).	
303(c).....	32:154 (1st 26 words of last par.).	June 3, 1916, ch. 134, § 110 (1st 30 words of last par.); restated Sept. 22, 1922, ch. 423, § 6 (1st 30 words of last par.); restated May 12, 1928, ch. 529 (1st 30 words), 45 Stat. 500.
303(d).....	32:133 (proviso).	

In subsection (a), 32:132 (last 23 words) is omitted as covered by section 304 of this title.

In subsection (b), the words "Under such regulations as the Secretary may prescribe" are substituted for the word "likewise".

In subsection (c), the words "in the inactive * * * National Guard" are substituted for the words "not on the active list", since there is no active list prescribed for the National Guard.

In subsection (d), the words "under any enlistment" are omitted as surplusage.

AMENDMENTS

1962—Subsec. (c). Pub. L. 87-649 repealed subsec. (c) which provided that a person enlisted in the inactive Army National Guard or inactive Air National Guard is not entitled to pay under section 301 of Title 37.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Persons enlisted in inactive National Guard not entitled to pay, see section 206 of Title 37, Pay and Allowances of Uniformed Services.

Transfer of enlisted members from Army National Guard of United States and Air National Guard of United States to Army Reserve and Air Force Reserve, see sections 3259 and 8259 of Title 10, Armed Forces.

§ 304. Enlistment oath

Each person enlisting in the National Guard shall sign an enlistment contract and subscribe to the following oath:

"I do hereby acknowledge to have voluntarily enlisted this —— day of ————, 19—, in the ———— National Guard of the State of ———— for a period of —— year(s) under the conditions prescribed by law, unless sooner discharged by proper authority.

"I, ————————, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and of the State of ———— against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of ———— and

the orders of the officers appointed over me, according to law and regulations. So help me God."

The oath may be taken before any officer of the National Guard of the State or Territory, or of Puerto Rico, the Canal Zone, or the District of Columbia, as the case may be, or before any other person authorized by the law of the jurisdiction concerned to administer oaths of enlistment in the National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 602; Oct. 5, 1962, Pub. L. 87-751, § 2, 76 Stat. 748.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
304.....	32:123.	June 3, 1916, ch. 134, § 70; restated June 4, 1920, ch. 227, subch. I, § 38; restated June 15, 1933, ch. 87, § 8, 48 Stat. 156; June 19, 1935, ch. 277, § 3, 49 Stat. 391; July 9, 1952, ch. 608, § 806(b), 66 Stat. 506.

The words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of title 1. The words "Each person" are substituted for the word "Men". The words "——— National Guard" are substituted for the words "National Guard (Air National Guard)".

AMENDMENTS

1962—Pub. L. 87-751 substituted "support and defend the Constitution of the United States and of the State of ——— against all enemies, foreign and domestic; that I will bear true faith and allegiance to them" for "bear true faith and allegiance to the United States of America and to the State of ———; That I will serve them honestly and faithfully against all their enemies whomsoever" and inserted "So help me God."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-751 not to effect any oath taken before one year after Oct. 5, 1962, see section 3 of Pub. L. 87-751, set out as an Effective Date of 1962 Amendment note under section 502 of Title 10, Armed Forces.

CROSS REFERENCES

General military law provision, see section 502 of Title 10, Armed Forces.

Subscription to oath necessary for enlistment as member of Army National Guard of United States and Air National Guard of United States, see sections 3261 and 8261 of Title 10.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 3261, 8261.

§ 305. Federal recognition of commissioned officers: persons eligible

(a) The following categories are eligible for Federal recognition as commissioned officers of the National Guard:

(1) Members of the National Guard.

(2) Members of the Army, Navy, Air Force, or Marine Corps.

(3) Former officers of the Army, Navy, Air Force, or Marine Corps.

(4) Former enlisted members of the Army, Navy, Air Force, or Marine Corps who were discharged honorably or under honorable conditions.

(5) Graduates of the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy.

(6) Graduates of a school, college, university, or officer's training camp who received military instruction under the supervision of a commissioned officer of the Regular Army or the Regular Air Force, and whose fitness for appointment has been certified by that officer.

(7) Civilians who are specially qualified for duty in a technical or staff branch or organization.

(b) To be eligible for Federal recognition under this section with a view to serving as a nurse, a person must be a graduate of a hospital or university training school and a registered nurse.

(Aug. 10, 1956, ch. 1041, 70A Stat. 602; Sept. 2, 1958, Pub. L. 85-861, § 2(5), 72 Stat. 1554; Nov. 8, 1967, Pub. L. 90-130, § 2(1), 81 Stat. 383.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
305.....	32:111 (less 37th through 54th words).	June 3, 1916, ch. 134, § 74 (less 39th through 56th words); restated June 4, 1920, ch. 227, subch. I, § 41 (less 39th through 56th words), 41 Stat. 781.

The word "individual" is inserted for clarity to distinguish the individual Federal recognition that is necessary to membership as an officer from the general Federal recognition that is necessary to all membership in the National Guard (see section 301 of this title).

The words "June 4, 1920" are omitted as obsolete. The words "Only persons selected from the following categories are eligible for individual Federal recognition as commissioned officers" are substituted for the words "Persons commissioned * * * shall not be recognized as such under any of the provisions of this title unless they shall have been selected from the following classes".

In clause (2), the words "reserve officers" are omitted as covered by the words "members of the Army, Navy, Air Force, or Marine Corps".

In clause (4), the words "under honorable conditions" are inserted for clarity.

In clause (5), the words "the United States Air Force Academy" are inserted to reflect the establishment of that institution by the Air Force Academy Act (68 Stat. 47).

In clause (7), the words "staff branch" are substituted for the words "Staff Corps and departments".

1958 ACT

Section of title 32	*Source (U.S. Code)*	*Source (Statutes at Large)*
305(b).....	32 App.:4 (less applicability to age)	July 30, 1956, ch. 789, §§ 2 (less applicability to age), 3, 70 Stat. 729.

The words "who are citizens of the United States" are omitted as covered by section 313(b) of this title. The words "with a view to serving" are substituted for the words "to serve". The words "and have the physical and other qualifications prescribed by the Secretary of the Army" and section 3 of the source statute are omitted as covered by section 307(a)(2) of this title. The applicability of section 3 of the source statute to section 1 of the source statute is omitted as unnecessary.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-130, § 2(1)(A), struck out provision that, except as provided in subsec. (b), only male persons from the enumerated categories were eligible for Federal recognition as commissioned officers of the National Guard.

Subsec. (b). Pub. L. 90-130, § 2(1)(B), (C), struck out provision that women are eligible for Federal recognition as commissioned officers of the National Guard, with a view to serving as nurses or medical specialist, and substituted "person" for "woman" in the description of the individual who must be a graduate of a hospital or university training school and a registered nurse in order to be eligible for Federal recognition under this section with a view to serving as a nurse.

1958—Subsec. (a). Pub. L. 85-861, § 2(5)(A), designated as subsec. (a) what had formerly been the entire section and substituted "Except as provided in subsection (b), only male persons" for "Only persons".

Subsec. (b). Pub. L. 85-861, § 2(5)(B), added subsec. (b).

§ 307. Federal recognition of officers: examination; certificate of eligibility

(a) To be eligible for Federal recognition as an officer of the National Guard, a person must—

(1) receive an appointment with a view to filling a vacancy in a federally recognized unit or organization of the National Guard;

(2) have the qualifications prescribed by the Secretary concerned for the grade, branch, position, and type of unit or organization involved: and

(3) except as provided in subsections (d) and (e) of this section and sections 8365 and 8366 of title 10, pass an examination for physical, moral, and professional fitness to be prescribed by the President, and subscribe to the oath of office prescribed by section 312 of this title.

(b) The examination prescribed by subsection (a)—

(1) shall be conducted, for the Army National Guard, by a board of three commissioned officers designated by the Secretary of the Army from members of the Regular Army or the Army National Guard of the United States, or both, and for the Air National Guard, by a board of three commissioned officers designated by the Secretary of the Air Force from members of the Regular Air Force or the Air National Guard of the United States, or both; and

(2) may be held before original appointment or promotion.

(c) If such a board finds a person qualified, the Chief of the National Guard Bureau may issue to him a certificate of eligibility for Federal recognition for the office for which he was found qualified. If he is originally appointed or promoted within two years to that office, he is entitled to Federal recognition without further examination, except as to physical condition.

(d) Subject to subsection (a)(1) and (2) and to such physical examination as may be prescribed, Federal recognition shall be extended to each officer of the Army Reserve who has qualified for appointment as an officer of the Army National Guard in his reserve grade. Similarly, Federal recognition shall be extended to each officer of the Air Force Reserve who has qualified for appointment as an officer of the Air National Guard. Federal recognition extended under this subsection is effective from the date of appointment in the Army National Guard or the Air National Guard, as the case may be.

(e) Subject to subsection (a)(1) and (2), Federal recognition shall be extended to each officer of the Air Force Reserve who is appointed in a commissioned grade in the Air National Guard to fill a vacancy, if on the date on which he is appointed his reserve grade is the same as the grade in which he is appointed or his name is on a recommended list for promotion to that reserve grade.

(f) Federal recognition extended under subsection (d) or (e) is effective from the date of appointment in the Army National Guard or the Air National Guard, as the case may be.

(g) Federal recognition may not be extended in the case of any member of the National Guard of the Virgin Islands in any grade above colonel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 602; Sept. 2, 1958, Pub. L. 85-861, § 2(6), 72 Stat. 1543; Oct. 13, 1972, Pub. L. 92-492, § 2(b), 86 Stat. 810.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
307(a)	32:113 (1st sentence). 32:111 (37th through 54th words). 50:1113(a) (as applicable to officers).	June 3, 1916, ch. 134, § 74 (39th through 56th words); restated June 4, 1920, ch. 227, subch. I, § 41 (39th through 56th words), 41 Stat. 781.
307(b)	32:113 (2d sentence and 1st 24 words of 3d sentence).	June 3, 1916, ch. 134, § 75; restated June 15, 1933, ch. 87, § 12, 48 Stat. 158; July 9, 1952, ch. 608, § 803 (10th par.), 66 Stat. 505.
307(c)	32:113 (3d sentence, less 1st 24 words).	
307(d)	50:1115(a) (less last 39 words).	July 9, 1952, ch. 608, §§ 703(a) (as applicable to officers), 705(a) (less last 39 words), 66 Stat. 502.

In subsection (b), the words "prescribed by subsection (a)" are substituted for the words "to determine such qualifications for appointment". The word "designated" is substituted for the word "appointed", since the filling of the positions involved is not an appointment to office in the constitutional sense. The words "of an individual as an officer or warrant officer" are omitted as surplusage.

In subsection (c), the word "originally" is inserted for clarity. The words "If such a board finds a person" are substituted for the words "if the applicant has been found". The words "for individual Federal recognition for the office for which he was found qualified" are inserted for clarity. The words "that office" are substituted for the words "the office for which he was found qualified".

In subsection (d), the words "Notwithstanding the provisions of section 113 of Title 32" are omitted as covered by the words of exception in revised subsection (a). The words "Subject to subsection (a)(1) and (2)" are inserted, since 50:1115(a) (less last 39 words) was not an exception to that part of 50:1113 relating to qualifications prescribed by the Secretary, or to the requirement that only members of federally recognized units can be federally recognized. The words "in his reserve grade" are substituted for the words "in the same grade in which he is appointed as a Reserve officer of the appropriate Armed Force of the United States". The last sentence is inserted for clarity.

1958 ACT

Section of title 32	*Source (U.S. Code)*	*Source (Statutes at Large)*
307(a)	50:1349(b) (1st sentence).	Sept. 3, 1954, ch. 1257, § 519(b), 68 Stat. 1179.
307(e)	50:1349(b) (less 1st sentence, and less 36th through 58th words of 2d sentence).	
307(f)	50:1349(b) (36th through 58th words of 2d sentence).	

In subsection (e), the words "to subsection (a)(1) and (2)" are inserted, since 50:1349(b) was not an exception to that part of 50:1113 relating to qualifications prescribed by the Secretary, or to the requirement that only members of federally recognized units can be federally recognized. The words "without the examination prescribed in section 113 of Title 32" are omitted as covered by the words of exception in revised subsection (a). The last 37 words are substituted for 50:1349(b) (last 29 words of 2d sentence; and last sentence).

AMENDMENTS

1972—Subsec. (g). Pub. L. 92-492 added subsec. (g).

1958—Subsec. (a). Pub. L. 85-861, § 2(6)(A), substituted "subsections (d) and (e) of this section and sections 8365 and 8366 of title 10" for "subsection (d)" in cl. (3).

Subsecs. (e) and (f). Pub. L. 85-861, § 2(6)(B), added subsecs. (e) and (f).

CROSS REFERENCES

Appointment of officers of Army National Guard and Air National Guard as Reserves for service as members of Army National Guard of United States and Air National Guard of United States, see sections 3351 and 8351 of Title 10, Armed Forces.

Extension of recognition upon promotion in Air National Guard of the United States without examination, see sections 8365, 8366, and 8376 of Title 10.

Suspension of subsec. (e) of this section, see section 111 of this title.

Transfer of officers from Army National Guard of United States and Air Force National Guard of United States to Army Reserve and Air Force Reserve, see sections 3352 and 8352 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 111, 308, 310 of this title; title 10 sections 8365, 8366, 8376.

§ 308. Federal recognition of officers: temporary recognition

(a) The Secretary of the Army may authorize the extension of temporary Federal recognition as an officer of the Army National Guard to any person who has passed the examination prescribed in section 307(b) of this title, pending his appointment as a reserve officer of the Army. The Secretary of the Air Force may do likewise for a person who has passed that examination pending his appointment as a reserve officer of the Air Force. Temporary recognition so extended may be withdrawn at any time. If not sooner withdrawn or replaced by permanent recognition upon appointment as a reserve officer in the same grade, it terminates six months after its effective date.

(b) To be eligible for temporary Federal recognition under subsection (a), a person must take an oath that during the period of temporary recognition he will perform his Federal duties as if he had been appointed as a reserve officer of the Army or the Air Force, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 603.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
308(a)	50:1114 (less 2d and 3d sentences).	July 9, 1952, ch. 608, § 704 (less 2d sentence), 66 Stat. 502.
308(b)	50:1114 (3d sentence).	

In subsection (a), the words "by regulations" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words "as an officer of the Army National Guard to any person" are substituted for the words "to any officer of the National Guard or Air National Guard". The second sentence is inserted for clarity. The words "successfully", "final determination of his eligibility for, and", "in the grade concerned", and "automatically" are omitted as surplusage. 50:1114 (proviso of last sentence) is omitted as surplusage.

In subsection (b), the words "To be eligible for temporary Federal recognition under subsection (a), a person" are substituted for the words "However, a temporary extension of Federal recognition shall be granted only when the officer". The words "the period of temporary recognition" are substituted for the words "such recognition". The words "and obligations required of him" and "in the same grade" are omitted as surplusage.

§ 309. Federal recognition of officers: Army National Guard; officers promoted to fill vacancies

Each officer of the Army National Guard who is promoted to fill a vacancy in a federally recognized unit thereof, and who is eligible for promotion under section 3363(b) of title 10, shall be examined for Federal recognition in the grade to which he is promoted. However, a second lieutenant or first lieutenant of the Army National Guard who has served creditably for at least one year in a position prescribed to be filled by a captain, and who has not previously been federally recognized under this section, may be examined for Federal recognition in the next higher grade without regard to section 3363(b) of title 10.

(Added Pub. L. 85-861, § 2(7), Sept. 2, 1958, 72 Stat. 1543.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
309	50:1251.	Sept. 3, 1954, ch. 1257, § 319, 68 Stat. 1160.

The words "authorized under section 1227(a) of this title" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 111, 310 of this title; title 10 sections 3363, 3385.

§ 310. Federal recognition of officers: Army National Guard; automatic recognition

(a) Notwithstanding sections 307 and 309 of this title, if a second lieutenant of the Army National Guard is promoted to the grade of first lieutenant to fill a vacancy in a federally recognized unit thereof, Federal recognition is automatically extended to him in the grade of first lieutenant, effective as of the date on which he completes three years of service computed under section 3360(a) of title 10.

(b) Notwithstanding sections 307 and 309 of this title, if an officer of the Army Reserve in a reserve grade above second lieutenant is appointed in the next higher grade in the Army National Guard to fill a vacancy in a federally recognized unit thereof, Federal recognition is automatically extended to him in the grade in which he is so appointed in the Army National Guard, if he has been recommended for promotion to the grade concerned under section 3366, 3367, 3370, or 3383 of title 10 and has remained in an active status since he was so recommended. The extension of Federal recognition under this subsection is effective as of the date when the officer is appointed in the Army National Guard.

(Added Pub. L. 85–861, § 2(7), Sept. 2, 1958, 72 Stat. 1544.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
310(a)	50:1252 (less (2)).	Sept. 3, 1954, ch. 1257, § 320, 68 Stat. 1160.
310(b)	50:1252(2).	

In subsections (a) and (b), the words "federally recognized" are inserted for clarity.

In subsection (a), the words "or the date of the promotion, whichever is later" are omitted as inconsistent with section 3820(c) of title 10, requiring the discharge of each second lieutenant who is not promoted by the time he has three years of service. (See opinion of the Judge Advocate General of the Army (JAGA 1957/1019, Jan. 7, 1957).)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 3385.

§ 312. Appointment oath

Each person who is appointed as an officer of the National Guard shall subscribe to the following oath:

"I, ————, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of ———— against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the Governor of the State of ————, that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of ———— in the National Guard of the State of ———— upon which I am about to enter, so help me God."

(Aug. 10, 1956, ch. 1041, 70A Stat. 603.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
312	32:112.	June 3, 1916, ch. 134, § 73 (1st par.); restated June 15, 1933, ch. 87, § 11 (1st par.), 48 Stat. 157; July 9, 1952, ch. 608, § 306(c), 66 Stat. 507.

The words "Each person who is appointed as an" are inserted for clarity.

§ 313. Appointments and enlistments: age limitations

(a) To be eligible for original enlistment in the National Guard, a person must be at least 17 years of age and under 45, or under 64 years of age and a former member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps. To be eligible for reenlistment, a person must be under 64 years of age.

(b) To be eligible for appointment as an officer of the National Guard, a person must—

(1) be a citizen of the United States; and

(2) be at least 18 years of age and under 64.

(Aug. 10, 1956, ch. 1041, 70A Stat. 604; Sept. 2, 1958, Pub. L. 85–861, § 2(9), 72 Stat. 1544; Nov. 8, 1967, Pub. L. 90–130, § 2(2), 81 Stat. 383.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
313(a)	32:4 (less 22 words before proviso).	June 3, 1916, ch. 134, § 58; restated Feb. 28, 1925, ch. 371, § 1 (1st par.); restated June 15, 1933, ch. 87, § 5 (1st par.), 48 Stat. 155; June 19, 1935, ch. 277, § 2, 49 Stat. 391; June 28, 1947, ch. 162, § 7 (less applicability to § 57 of the Act of June 3, 1916, ch. 134), 61 Stat. 102; July 9, 1952, ch. 608, §§ 803 (8th par.), 806(j), 66 Stat. 505, 508.
313(b)	32:4 (22 words before proviso).	

In subsection (a), 32:4 (1st 19 words) is omitted as covered by section 101(3) and (5) of this title. 32:4 (54th through 62d words) is omitted as surplusage. The words "under 64" are substituted for the words "not more than sixty-four" to conform to an opinion of the Judge Advocate General of the Army (JAGA 1953/9033, 3 Dec. 1953). The word "Regular" is inserted before the words "Navy" and "Marine Corps". The words "Regular Air Force" are inserted to complete the coverage of the revised section. The word "reenlistment" is substituted for the words "subsequent enlistment".

1958 ACT

Section of title 32	Source (U.S. Code)	Source (Statutes at Large)
313(b).....	32 App.:4 (as applicable to age).	July 30, 1956, ch. 789, § 2 (as applicable to age), 70 Stat. 729.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
314(a).....	32:11.	Jan. 21, 1903, ch. 196, § 12, 32 Stat. 776.
314(b).....	32:12.	
314(c).....	10:998.	June 6, 1900, ch. 811, 31 Stat. 671.
314(d).....	32:13.	
	32:14.	June 3, 1916, ch. 134, § 66, 39 Stat. 199.

In subsection (a), the word "appointed" is omitted, since the position is not filled by appointment in some cases. The Act of January 21, 1903, ch. 196, § 12 (last 48 words of 1st sentence) are not contained in 32:11. They are also omitted from the revised section as covered by subsection (d) of this section.

In subsection (b), the word "grade" is substituted for the word "rank". The words "To be eligible for appointment as * * * a person must be" are substituted for the words "each * * * shall be". The words "of that jurisdiction" are substituted for the words "of the Territory for which he is appointed".

In subsection (c), the word "Regular" is inserted as an implication of 10:998 (last 2 words). The words "commanding general" are substituted for the words "brigadier general commanding", since the commanding general might hold another grade.

The words "basic pay" are substituted for the words "active service pay" to conform to section 201 of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 232). The word "grade" is substituted for the word "rank"

In subsection (d), the words "at such times and in such form" are omitted as covered by the words "such returns and reports as the Secretary * * * may prescribe".

AMENDMENTS

1967—Subsec. (b). Pub. L. 90-130 struck out clause (3) which added the requirement that women appointed with a view to serving as a nurse or medical specialist be at least 21 years of age and under 64 years of age in order to be eligible for appointment as an officer of the National Guard.

1958—Subsec. (b). Pub. L. 85-861 inserted qualifications for appointment of women with a view to serving as nurses or medical specialists.

CROSS REFERENCES

Army National Guard of United States and Air National Guard of United States, enlistment, see sections 3261 and 8261 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 311.

§ 314. Adjutants general

(a) There shall be an adjutant general in each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia. He shall perform the duties prescribed by the laws of that jurisdiction.

(b) The President shall appoint the adjutant general of each Territory, the Canal Zone, and the District of Columbia and prescribe his grade and qualifications. To be eligible for appointment as adjutant general of a Territory or the Canal Zone, a person must be a citizen of that jurisdiction.

(c) The President may detail as adjutant general of the District of Columbia any retired commissioned officer of the Regular Army or the Regular Air Force recommended for that detail by the commanding general of the District of Columbia National Guard. An officer detailed under this subsection is entitled to the basic pay and allowances of his grade.

(d) The adjutant general of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia, and officers of the National Guard, shall make such returns and reports as the Secretary of the Army or the Secretary of the Air Force may prescribe, and shall make those returns and reports to the Secretary concerned or to any officer designated by him. Each Secretary shall send with his annual report to Congress an abstract of the returns and reports of the adjutants general and such comments as he considers necessary for the information of Congress.

(Aug. 10, 1956, ch. 1041, 70A Stat. 604; Sept. 2, 1958, Pub. L. 85-894, 72 Stat. 1713.)

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-894 struck out the words "Puerto Rico" in two instances.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 709 of this title.

§ 315. Detail of regular members of Army and Air Force to duty with National Guard

(a) The Secretary of the Army shall detail commissioned officers of the Regular Army to duty with the Army National Guard of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia. The Secretary of the Air Force shall detail commissioned officers of the Regular Air Force to duty with the Air National Guard of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia. With the permission of the President, an officer so detailed may accept a commission in the Army National Guard or the Air National Guard, as the case may be, terminable in the President's discretion, without prejudicing his rank and without vacating his regular appointment.

(b) The Secretary of the Army may detail enlisted members of the Regular Army for duty with the Army National Guard of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia. The Secretary of the Air Force may detail enlisted members of the Regular Air Force for duty with the Air National Guard of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 604.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
315(a)	32:68 (less 2d sentence). 32:69.	June 3, 1916, ch. 134, § 100, 39 Stat. 208.
315(b)	32:68 (2d sentence).	

In subsection (a), 32:68 (last sentence) is omitted as surplusage, since positive provisions relating to the assignment or detail of retired officers to that duty are covered by section 3504(a) or 8504(a) of title 10. The words "of the active list", in 32:68, are omitted for the same reason. The words "so detailed" are substituted for the words "detailed under section 68 of this title", in 32:69. The words "relative or lineal", in 32:69, are omitted as surplusage.

CROSS REFERENCES

National Guard Bureau, assignment of regular or reserve officers of Army or Air Force, see sections 3541 and 8541 of Title 10, Armed Forces.

Reserve components, detail of members of regular and reserve components to assist, see section 715 of Title 10.

§ 316. Detail of members of Army National Guard for rifle instruction of civilians

The President may detail officers and noncommissioned officers of the Army National Guard to duty as instructors at rifle ranges for the training of civilians in the use of military arms.

(Aug. 10, 1956, ch. 1041, 70A Stat. 605.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
316	32:183.	June 3, 1916, ch. 134, § 113 (3d sentence), 39 Stat. 211.

The word "civilians" is substituted for the word "citizenry". The word "capable" is omitted as surplusage.

CROSS REFERENCES

Credit for service as members of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3686 and 8686 of Title 10, Armed Forces.

Death gratuity, see section 321 of this title.

Hospitalization, when Secretary may require, see section 320 of this title.

Inactive duty training, duty (other than full-time duty) under this section as, see section 101 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 320, 321, 334, 715 of this title; title 10 sections 701, 1332, 1333, 3686, 8686; title 38 sections 101, 765, 2024.

§ 317. Command during joint exercises with Federal troops

When any part of the National Guard that is not in Federal service participates in an encampment, maneuver, or other exercise for instruction, together with troops in Federal service, the command of the post, air base, or other place where it is held, and of the troops in Federal service on duty there, remains with the officers in Federal service who command that place and the Federal troops on duty there, without regard to the rank of the officers of the National Guard not in Federal service who are temporarily participating in the exercise.

(Aug. 10, 1956, ch. 1041, 70A Stat. 605.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
317	32:72.	June 3, 1916, ch. 134, § 95, 39 Stat. 207.

The words "not in Federal service" are inserted to show that the revised section applies only to joint exercises involving National Guard troops not in Federal service, since 32:72 was enacted before the establishment of the National Guard of the United States, in 1933. The words "troops in Federal service" are substituted for the words "troops of the United States". The words "officers in Federal service who command" are substituted for the words "commander of the United States troops". The words "post, air base, or other place" are substituted for the words "military post, or reservation, or elsewhere". The words "that place and the Federal troops on duty there" are substituted for the words "there or elsewhere" The words "including outdoor target practice" and "field and coast defense instruction" are omitted as surplusage.

§ 318. Compensation for disablement during training

A member of the National Guard is entitled to the hospital benefits, pensions, and other compensation provided by law or regulation for a member of the Regular Army or the Regular Air Force, as the case may be, of corresponding grade and length of service, whenever he is called or ordered to perform training under section 502, 503, 504, or 505 of this title—

(1) for a period of more than 30 days, and is disabled in line of duty from disease while so employed; or

(2) for any period of time, and is disabled in line of duty from injury while so employed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 605; Sept. 2, 1958, Pub. L. 85-861, § 33(c)(1), 72 Stat. 1567; Sept. 7, 1962, Pub. L. 87-649, § 8(a), 76 Stat. 495.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
318	32:160a (less applicability to death gratuities).	June 30, 1949, ch. 225, § 3 (less applicability to death gratuities), 63 Stat. 202.

The words "A member of the National Guard" are substituted for the words "All officers, warrant officers, and enlisted men of * * * the federally recognized National Guard of the several States, Territories, and the District of Columbia—". Reference to "retired pay" is omitted as superseded by chapter 61 of title 10 (see opinion of the Comptroller General, B-100262, 25 Apr. 1951, 30 Comp. Gen. 409). The words "active duty" are omitted, since persons do not perform active duty, in the sense in which that term is defined in sec-

tion 101(11) of this title, in their status as members of the National Guard. The references to 10:22–23, 24–26, and 30–36 are omitted as repealed by section 401 of the Army Organization Act of 1950, 64 Stat. 271, and section 401(a)(1) of the Air Force Organization Act of 1951, 65 Stat. 333. The reference to 10:23a is omitted as executed. With the exception of 32:62, 63, and 65, the remainder of the references do not relate to the training of members of the National Guard, and are therefore omitted from the revised section. The reference to section 504 of this title, based on section 97 of the National Defense Act, is inserted. Although not contained in the United States Code, it is contained in section 3 of the Act of June 20, 1949, ch. 225, 63 Stat. 202. The words "in all respects" and "as are now or may hereafter be" are omitted as surplusage.

1958 ACT

The change makes clear that the nature of the call or order is determinative rather than the period of time the member is actually in training.

AMENDMENTS

1962—Pub. L. 87-649 eliminated provisions which related to entitlement to pay and allowances. See section 204 of Title 37, Pay and Allowances of the Uniformed Services.

1958—Pub. L. 85-861 substituted "called or ordered to perform training" for "in training".

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as an Effective Date of 1958 Amendment note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE OF BENEFITS

Act June 20, 1949, ch. 225, § 4, 63 Stat. 202, provided that: "The provisions of this Act shall be effective from August 14, 1945, but no back pay, pension, compensation, death gratuity, or retirement pay shall be held to have accrued as the result of the enactment of this Act for any period prior to such date: *Provided*, That in the case of persons electing to receive the benefits of this Act, the amount of any monetary benefits received for any period subsequent to August 14, 1945, under any provisions of law providing benefits for disability or death incident to the service described in sections 1, 2, and 3 of this Act, shall be deducted from the monetary benefits provided for herein."

CROSS REFERENCES

Compensation for service-connected disability or death, see section 301 et seq. of Title 38, Veterans' Benefits.

Hospitalization of members of Army and Air Force on active duty, see sections 3723 and 8723 of Title 10, Armed Forces.

Regulations affecting pay and allowances of military personnel, see section 1001 of Title 37, Pay and Allowances of the Uniformed Services.

Retirement or separation for physical disability for members of armed forces generally, see section 1201 et seq. of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 319 of this title.

§ 319. Compensation for disablement during training when not covered by section 318 of this title

(a) Under regulations to be prescribed by the President, a member of the National Guard—

(1) who is injured, or contracts a disease, in line of duty while traveling to or from, or while attending, an encampment, maneuver, or other exercise, or a service school, under section 503, 504, or 505 of this title; or

(2) who is injured in line of duty while performing an aerial flight;

is entitled to the benefits of subsection (b).

(b) So far as any benefit named in this subsection is not provided for him under section 318 of this title, a member covered by subsection (a) is entitled to—

(1) the hospitalization, rehospitalization, and medical and surgical care in a hospital and at his home appropriate for the treatment of his injury or disease until the resulting disability cannot be materially improved by further hospitalization or treatment;

(2) the basic pay and allowances, whether in money or in kind, to which he was entitled at the time when the injury was incurred or the disease contracted, during the period of his hospitalization or rehospitalization, but not for more than a total of six months after the end of his prescribed tour of training;

(3) subsistence during hospitalization or rehospitalization when he is not entitled to pay and allowances under clause (2); and

(4) necessary transportation incident to his hospitalization, rehospitalization, and return to his home when he is discharged from the hospital.

(Aug. 10, 1956, ch. 1041, 70A Stat. 605.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
319(a).....	32:164a (1st 80 words).	June 15, 1936, ch. 547,
	32:164b.	§ 1 (1st and 2d sen-
319(b).....	32:164a (less 1st 80 words).	tences), 49 Stat. 1507.

In subsection (a), the words "a member" are substituted for the words "Officers, warrant officers, and enlisted men". 32:164a (words between 1st and 2d semicolons) is omitted as executed. The words "is entitled to the benefits of subsection (b)" are substituted for the words "shall * * * be entitled, at Government expense".

Subsection (a)(2) is substituted for 32:164b.

In subsection (b), the words "So far as any benefit named in this subsection is not provided for him under section 318 of this title" are inserted, since it is possible that the benefits provided by that revised section will, as to certain persons, overlap those provided by this revised section. The words "a member covered by subsection (a) is entitled to—" are inserted for clarity.

In subsection (b)(1), the word "necessary" and "from such injury or disease" are omitted as surplusage.

In subsection (b)(3), the words "under clause (2)" are substituted for the words "under the preceding provisions". The words "at Government expense" are omitted as surplusage.

§ 320. Hospitalization: when Secretary may require

(a) The Secretary of the Army or the Secretary of the Air Force, as the case may be, may order the hospitalization, medical and surgical treatment, and domiciliary care, for as long as necessary, of any member of the Army National Guard or the Air National Guard, respectively, in training under section 502, 503, 504, or 505 of

this title, or on duty under section 316 of this title, and may incur obligations with respect thereto.

(b) Subsection (a) applies whether or not the member was injured, or contracted a disease, in line of duty, except in the case of—

(1) a member of the National Guard in armory-drill status, unless he incurs an injury while participating in an aerial flight under section 502(e) of this title; or

(2) a member of the National Guard treated in a private hospital, or by a civilian physician, while on leave of absence for more than 24 hours.

(Aug. 10, 1956, ch. 1041, 70A Stat. 606.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
320(a)	10:455e (less provisos). 32:164d (less provisos).	July 15, 1939, ch. 282; restated Oct. 14, 1940,
320(b)	10:455e (provisos). 32:164d (provisos).	ch. 875, § 5, 54 Stat. 1137.

In subsection (a), the references to 10:455a–455d and 32:164a–164c, and the words "nor any other law of the United States shall be construed as limiting the power and authority", are omitted, since the revised section makes explicit the authority of the appropriate Secretary to require the prescribed hospitalization and care. The words "under such regulations as he may prescribe" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words "in the active military service or on active duty, or" are omitted, since persons do not perform active duty, in the sense in which that term is defined in section 101(11) of this title, in their status as members of the National Guard. The references in 10:455e and 32:164d to 32:144–146 and 186 are omitted, since they do not authorize any duty or training. The words "any member of the National Guard" are substituted for the word "persons", since the applicability of the revised section is limited to those members.

In subsection (b), the first 18 words are substituted for the words "without reference to their line-of-duty status". The words "except in the case of—" are substituted for the words "That this section shall not include" and "That this section shall not apply". The word "member" is substituted for the words "officers, warrant officers, and enlisted men" and "officers and enlisted men". The words "(as distinguished from disease)" are omitted as surplusage. The word "furloughs" is omitted as obsolete.

CROSS REFERENCES

Army and Air Force, members of, see sections 3723 and 8723 of Title 10, Armed Forces.

§ 321. Death gratuity

(a) Except as provided in subsection (h), the Secretary of the Army or the Secretary of the Air Force, as the case may be, shall have a death gratuity paid to or for the survivor prescribed by subsection (e) immediately upon receiving official notification of the death of a member of the National Guard who—

(1) dies while performing full-time training or duty under section 316, 502, 503, 504, or 505 of this title or while performing authorized travel to or from that training or duty;

(2) dies while performing other training or duty under one of those sections or under section 206 of title 37; or

(3) when authorized or required by an authority designated by the Secretary concerned, assumed an obligation to perform training or duty under one of those sections or under section 206 of title 37 (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service), and who dies from an injury incurred by him after December 31, 1956, while traveling directly to or from that training or duty.

(b) Except as provided in subsection (h), the Secretary of the Army or the Secretary of the Air Force, as the case may be, shall have a death gratuity paid to or for the survivor prescribed by subsection (e) of each member of the National Guard who dies within 120 days after his discharge or release from—

(1) full-time training or duty under section 316, 502, 503, 504, or 505 of this title; or

(2) other training or duty performed under one of those sections or under section 206 of title 37 (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);

if the Administrator of Veterans' Affairs determines that the death resulted from (A) disease or injury incurred or aggravated while performing training or duty under clause (1) or the travel described in subsection (c), or (B) injury incurred or aggravated while performing training or duty under clause (2) or the travel described in subsection (c)(2).

(c) The travel covered by subsection (b) is—

(1) authorized travel to or from the training or duty described in subsection (b)(1); or

(2) travel directly to or from the training or duty described in subsection (b)(1) or (2) that is performed by a member of the National Guard who, when authorized or required by an authority designated by the Secretary concerned, assumed an obligation to perform that training or duty, and whose injury was incurred or aggravated after December 31, 1956.

(d) For the purposes of subsections (b) and (c), the standards and procedures for determining the incurrence or aggravation of a disease or injury are those applicable under the laws relating to disability compensation administered by the Veterans' Administration, except that there is no requirement under this section that any incurrence or aggravation have been in line of duty.

(e) A death gratuity payable upon the death of a person covered by subsections (a)–(d) shall be paid to or for the living survivor named in section 1477 of title 10, except that references in that section to section 1475 or 1476 shall be treated as references to subsection (a) or subsections (b)–(d) of this section, as the case may be.

(f) The death gratuity payable under this section shall be equal to 6 months' pay at the rate to which the decedent was entitled on the date of his death, except that the gratuity may not

be less than $800 or more than $3,000. For this purpose:

(1) A person covered by subsection (a), (b), or (c) is considered to have been entitled, on the date of his death, to pay at the rate to which he was entitled on the last day on which he performed training or duty.

(2) A person covered by subsection (a), (b), or (c) who performed training or duty without pay is considered to have been performing that training or duty with pay.

(3) A person covered by subsection (a), (b), or (c) who incurred a disability while performing training or duty under section 316, 502, 503, 504, or 505 of this title or under section 206 of title 37 and who became entitled to basic pay while receiving hospital or medical care, including outpatient care, for that disability, is considered to have been on that training or duty for as long as he is entitled to that pay.

(g) The Secretary of the Army, the Secretary of the Air Force, and the Administrator of Veterans' Affairs have the same obligations with respect to payments under subsections (a), (b), and (c) as they have under sections 1479 and 1480(c) of title 10.

(h) Payments under this section are subject to the restrictions that section 1480(a), (b), and (d) of title 10 imposes on payments under sections 1475–1477 of that title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 606; Sept. 2, 1958, Pub. L. 85–861, § 2(10), 72 Stat. 1544; Sept. 7, 1962, Pub. L. 87–649, § 8(b), 76 Stat. 495.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
321	32:160a (as applicable to death gratuities for National Guard).	June 20, 1949, ch. 225, § 3 (as applicable to death gratuities), 63 Stat. 202.

The words "A member of the National Guard" are substituted for the words "All officers, warrant officers, and enlisted men of * * * the federally recognized National Guard of the several States, Territories, and the District of Columbia—". 32:160a (as applicable to death gratuities) provides the same death gratuities for members of the National Guard as are "now or may hereafter" be provided for members of the Regular Army or the Regular Air Force, as the case may be, under certain conditions of service and disability. By inserting the words "under section 3688 or 8688 of title 10", the revised section insures that any change made in that revised section will apply equally to members of the National Guard. The words "active duty" are omitted, since persons do not perform active duty, in the sense in which that term is defined in section 101 (11) of this title, in their status as members of the National Guard. The references to sections 10:22–23, 24–26, and 30–36 are omitted as repealed by section 401 of the Army Organization Act of 1950, 64 Stat. 271, and section 401(a)(1) of the Air Force Organization Act of 1951, 65 Stat. 333. The reference to 10:23a is omitted as executed. With the exception of 32:62, 63, and 65, the remainder of the references do not relate to the training of members of the National Guard, and are therefore omitted from the revised section. The reference to section 504 of this title, based on section 97 of the National Defense Act, is inserted. Although not contained in the United States Code, it is contained in section 3 of the Act of June 20, 1949, ch. 225, 63 Stat. 202. The words "while he is in training" are substituted for the words "while so employed" and "while so engaged". The words "in all respects" and "as now or may hereafter be" are omitted as surplusage.

1958 ACT

Section of title 32	*Source (U.S. Code)*	*Source (Statutes at Large)*
321(a)	38:1101(5)(D) (as applicable to death gratuity, less (D) (as applicable to 38:1133(a))). 38:1101(6)(A) (less clause (3) of 2d sentence, as applicable to death gratuity). 38:1101(6)(B) (1st sentence, less last 32 words, as applicable to death gratuity, and less (ii) (as applicable to 38:1133(a))). 38:1101(6)(C) (as applicable to death gratuity). 38:1131(a).	Aug. 1, 1956, ch. 837, §§ 102(5)(D) (as applicable to death gratuity), (6)(A) (less clause (2) of 2d sentence, as applicable to death gratuity), (B) (less last 32 words of 1st sentence, as applicable to death gratuity), (C) (as applicable to death gratuity), (7) (as applicable to death gratuity), 301, 302, 303 (less (b)), 304, 70 Stat. 859, 860, 866, 869.
321(b), (c)	38:1101(5)(D) (as applicable to 38:1133(a)). 38:1101(6)(B)(ii) (as applicable to 38:1133(a)). 38:1133(a).	
321(d)	38:1133(c).	
321(e)	38:1101(7) (as applicable to death gratuity). 38:1131(c) and (d). 38:1134(d).	
321(f)	38:1131(b). 38:1133(d). 38:1134(c).	
321(g)	38:1132. 38:1101(6)(B) (less 1st sentence, as applicable to death gratuity).	
321(h)	38:1134(a). 38:1133(e). 38:1134(b).	

In subsection (a), the word "receiving" is inserted for clarity. Clauses (1) and (2) are substituted for 38:1101(6)(C). Clause (3) (less words in parentheses) is substituted for 38:1101(6)(B) (1st sentence, less last 32 words). The words in parentheses in clause (3) are substituted for 38:1101(6)(A) (2d sentence, less clause (3)). In clauses (2) and (3), the words "or under section 301 of title 37" are substituted for 38:1101(6)(A) (39th through 54th words of 1st sentence).

In subsection (b), the words "Except as provided in subsection (h)" are inserted to reflect 38:1134(a). The words "to the survivor prescribed by subsection (e)" are inserted for clarity. The words "on or after January 1, 1957", in 38:1133(a), are omitted as executed. The words in parentheses in clause (2) are inserted to reflect 38:1101(6)(A) (2d sentence). The words "or under section 301 of title 37" are inserted to reflect 38:1101(6)(A) (39th through 54th words of 1st sentence).

In subsection (d), the word "criteria" is omitted as covered by the word "standards".

In subsection (f), the word "pay" is substituted for the words "basic pay (plus special and incentive pays)", since the word "pay", as defined in 101(16) of this title, includes those types of pay. In clause (3), the

words "and who became entitled to basic pay" are substituted for the words "and is placed in a pay status", and the words "is entitled to that pay" are substituted for the words "remains in a pay status".

AMENDMENTS

1962—Pub. L. 87-649 substituted "section 206 of title 37" for "section 301 of title 37" in subsecs. (a)(2), (3), (b)(2), and (f)(3).

1958—Pub. L. 85-861 substituted provisions contained in subsecs. (a) to (h) for provisions which authorized the Secretaries of the Army and Air Force to have a death gratuity paid to the widow, child, or other dependent relative named in section 3688 or 8688 of title 10 of a member of the National Guard who dies from a disability incurred in line of duty while he is in training under section 502, 503, 504, or 505 of this title for a period of more than 30 days, if the death is caused by disease, or for any period of time, if the death is caused by injury, and which required the death gratuity to be equal to, and to be paid under the same conditions as apply to, the death gratuity payable under sections 3688 or 8688 of title 10 for a member of the Regular Army or the Regular Air Force, as the case may be, of corresponding grade and length of service.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF BENEFITS

Benefits under act June 20, 1949, as effective from Aug. 14, 1945, see Effective Date of Benefits note under section 318 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 423.

§ 322. Discharge of enlisted members

(a) An enlisted member of the National Guard shall be discharged when—

(1) he becomes 64 years of age; or

(2) his Federal recognition is withdrawn.

(b) An enlisted member who is discharged from the National Guard is entitled to a discharge certificate similar in form and classification to the corresponding certificate prescribed for members of the Regular Army or the Regular Air Force, as the case may be.

(c) In time of peace, an enlisted member of the National Guard may be discharged before his enlistment expires, under such regulations as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 606.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
322(a)	32:154 (last par., less 1st 26, and last 26, words).	June 3, 1916, ch. 134, § 72; restated June 4, 1920, ch. 227, subch. I, § 40; restated June 15, 1933, ch. 87, § 10, 48 Stat. 157; July 9, 1952, ch. 608, § 806(d), 66 Stat. 507.
322(b)	32:125 (less last 27 words).	
322(c)	32:125 (last 27 words).	

HISTORIC AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
		June 3, 1916, ch. 134, § 110 (last par., less 1st 30, and last 25, words); restated Sept. 22, 1922, ch. 423, § 6 (last par., less 1st 30, and last 137, words); restated May 12, 1928, ch. 529 (less 1st 30, and last 25, words), 45 Stat. 500.

Subsection (a) is substituted for 32:154 (last par., less 1st 26, and last 26, words) to reflect an opinion of the Judge Advocate General of the Army (JAGA 1953/9033, 3 Dec. 1953).

In subsection (b), the words "is entitled to a discharge certificate similar in form and classification to the corresponding certificate" are substituted for the words "shall receive a discharge in writing in such form and with such classification as is or shall be". The words "service in" are omitted as surplusage.

In subsection (c), the words "his enlistment expires" are substituted for the words "the expiration of terms of enlistment".

CROSS REFERENCES

Army and Air Force enlisted members, limitations on discharge, see section 1169 of Title 10, Armed Forces.

§ 323. Withdrawal of Federal recognition

(a) Whenever a member of the National Guard ceases to have the qualifications prescribed under section 301 of this title or ceases to be a member of a federally recognized unit or organization of the National Guard, his Federal recognition shall be withdrawn.

(b) Under regulations to be prescribed by the President, the capacity and general fitness of an officer of the National Guard for continued Federal recognition may be investigated at any time by an efficiency board composed of commissioned officers of—

(1) the Regular Army or the Army National Guard of the United States, or both, who outrank him and who are detailed by the Secretary of the Army, if he is a member of the Army National Guard; or

(2) The Regular Air Force or the Air National Guard of the United States, or both, who outrank him and who are detailed by the Secretary of the Air Force, if he is a member of the Air National Guard.

If the findings of the board are unfavorable to the officer and are approved by the President, his Federal recognition shall be withdrawn.

(c) If a member of the Army National Guard of the United States or the Air National Guard of the United States is transferred to the Army Reserve or the Air Force Reserve, as the case may be, under section 3259, 3352(a), 8259, or 8352(a) of title 10, his Federal recognition is withdrawn.

(d) Except as provided in sections 1005 and 1006 of title 10, the Federal recognition of a second lieutenant of the Army National Guard who is discharged under section 3820(c) of title 10 for failure of promotion shall be withdrawn on the date of that discharge.

(e) Except as provided in sections 1005 and 1006 of title 10, the Federal recognition of a reserve officer of the Air Force who is not recommended for promotion under section 8368(c)(1) or (2) of title 10, or who is found to be not qualified for Federal recognition under section 8368(d) or (e) of title 10, shall be withdrawn.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Sept. 2, 1958, Pub. L. 85-861, §§ 2(11), 33(c)(2), 72 Stat. 1546, 1567.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
323(a)	32:154 (last 26 words of last par.).	June 3, 1916, ch. 134, § 76 (1st sentence, and 1st 24 words of 2d sentence); restated June 15, 1933, ch. 87, § 13 (1st sentence, and 1st 24 words of 2d sentence), 48 Stat. 156.
323(b)	32:115 (1st sentence, and 1st 24 words of 2d sentence).	June 3, 1916, ch. 134, § 110 (last 25 words of last par.); restated Sept. 22, 1922, ch. 423, § 6 (last 127 words of last par.); restated May 12, 1926, ch. 529 (last 25 words), 45 Stat. 501.
323(c)	50:1116 (last 15 words of 1st sentence).	July 9, 1952, ch. 608, § 706 (last 15 words of 1st sentence), 66 Stat. 503.

In subsection (a) the words "ceases to have the qualifications prescribed under section 300 of this title" are substituted for 32:154 (last 26 words of last par.), since it is implicit that a member who could not be paid would lose his federally recognized status (see JAGA 1953/9033, 3 Dec. 1953). The last 23 words of subsection (a) are inserted as a necessary implication of the rule stated in section 309(c) of this title.

In subsection (b), the words "or warrant officer" are omitted, since section 101(9) of this title defines "officer" to include warrant officers. The word "detailed" is substituted for the word "appointed", since the filling of the positions involved is not appointment to an office in the constitutional sense. The word "commissioned" is inserted after the words "composed of", since the word "officer" alone, in 32:115, referred to a commissioned officer only (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)). The words "who outrank him" are substituted for the words "senior in rank to the officer under investigation".

In subsection (c), the opening clause is substituted for the words "such transfer". The words "his Federal recognition is withdrawn" are substituted for the words "shall terminate his federally recognized National Guard or Air National Guard status".

1958 ACT

Section of title 32	*Source (U.S. Code)*	*Source (Statutes at Large)*
323(d)	50:1261 (as applicable to Federal recognition).	Sept. 3, 1954, ch. 1257, §§ 324 (as applicable to Federal recognition), 522(e)(1) (56th through 63d words), (e)(2) (78th through 85th words), 68 Stat. 1161, 1181.
323(e)	50:1352(e)(1) (56th through 63d words). 50:1352(e)(2) (78th through 85th words).	

The change [in subsec. (b)(1) and (2)] is necessary to exclude from the efficiency board commissioned officers of the Army Reserve or Air Force Reserve, in accordance with the source law, the first sentence of section 76 of the Act of June 3, 1916, chapter 134 (formerly 32 U.S.C. 115 (1st sentence)).

In subsection (d), the words "notwithstanding section 115 of title 32" are omitted as surplusage.

In subsection (e), the words "if appropriate" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (b)(1). Pub. L. 85-861, § 33(c)(2), substituted "the Regular Army or the Army National Guard of the United States, or both" for "a regular or reserve component of the Army".

Subsec. (b)(2). Pub. L. 85-861, § 33(c)(2), substituted "the Regular Air Force or the Air National Guard of the United States, or both" for "a regular or reserve component of the Air Force".

Subsecs. (d) and (e). Pub. L. 85-861, § 2(11), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsecs. (b)(1), (2) by Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as an Effective Date of 1958 Amendment note under section 101 of title 10, Armed Forces.

CROSS REFERENCES

Suspension of subsecs. (d) and (e) of this section, see section 111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 111 of this title; title 10 sections 3820, 8368, 8820.

§ 324. Discharge of officers; termination of appointment

(a) An officer of the National Guard shall be discharged when—

(1) he becomes 64 years of age; or

(2) his Federal recognition is withdrawn.

The official who would be authorized to appoint him shall give him a discharge certificate.

(b) Subject to subsection (a), the appointment of an officer of the National Guard may be terminated or vacated as provided by the laws of the State or Territory of whose National Guard he is a member, or by the laws of Puerto Rico, the Canal Zone, or the District of Columbia, if he is a member of its National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
324(a).....	32:114 (less 1st sentence).	June 3, 1916, ch. 134, § 77; restated June 15,
324(b).....	32:114 (1st sentence).	1933, ch. 87, § 14; restated June 19, 1935, ch. 277, § 4, 49 Stat. 391; July 9, 1952, ch. 608, § 803 (11th par.), 66 Stat. 505.

In subsection (a), the words "shall be discharged" are substituted for the words "shall thereupon cease to be a member thereof" since an official is required to give the officer a discharge certificate. The words "becomes 64 years of age" are substituted for the words "upon reaching the age of sixty-four years". The words "his Federal recognition is withdrawn" are substituted for the words "When Federal recognition is withdrawn * * * as provided in section 115 of this title".

In subsection (b), the words "Subject to subsection (a)" are inserted for clarity. The words "as provided by the laws" are substituted for the words "in such manner as * * * shall provide by law".

CROSS REFERENCES

Army National Guard of United States and Air National Guard of United States, discharge of officers, see sections 3820 and 8820 of Title 10, Armed Forces.

§ 325. Relief from National Guard duty when ordered to active duty

(a) Each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State or Territory, or of Puerto Rico, the Canal Zone, or the District of Columbia, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

(b) So far as practicable, members, organizations, and units of the Army National Guard of the United States or the Air National Guard of the United States ordered to active duty shall be returned to their National Guard status upon relief from that duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
325(a).....	50:1120.	July 9, 1952, ch. 608,
325(b).....	50:1122(b) (less last 17 words).	§§ 710, 712(b) (less last 17 words), 66 Stat. 503, 504.

In subsection (a), the words "in the service of the United States" are omitted as surplusage. The words "effective date of his order to active duty until he is relieved from that duty" are substituted for the words "active-duty date of the orders and for as long as they remain on active duty in the service of the United States". 50:1120 (last sentence) is omitted as surplusage, since the persons involved are members of the Army or the Air Force.

In subsection (b), the words "upon relief from that duty" are substituted for the words "upon being relieved from active duty". The words "their National Guard status" are substituted for the words "to the National Guard and Air National Guard in their respective States, Territories, and the District of Columbia".

CROSS REFERENCES

Active duty, see sections 672, 3495 and 8495 of Title 10, Armed Forces.

Return of arms and equipment upon relief from Federal service, see section 706 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 706 of this title.

§ 326. Courts-martial of National Guard not in Federal service: composition, jurisdiction, and procedures

In the National Guard not in Federal service, there are general, special, and summary courts-martial constituted like similar courts of the Army and the Air Force. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures, provided for those courts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 608.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
326.....	32:91.	June 3, 1916, ch. 134, § 102, 39 Stat. 208.

The words "not in Federal service" are substituted for the words "Except in organizations in the service of the United States". The words "have the jurisdiction and powers" are substituted for the words "and have cognizance of the same subjects, and possess like powers". The words "of three kinds, namely", "provided for by the laws and regulations governing", "proceedings of courts-martial of the National Guard", and "modes of" are omitted as surplusage.

CROSS REFERENCES

Uniform Code of Military Justice—
Generally, see section 801 et seq. of Title 10, Armed Forces.
Composition of courts-martial, see sections 825 to 829 of Title 10.
Court-martial jurisdiction, see sections 816 to 820 of Title 10.
Pre-trial procedure, see sections 830 to 835 of Title 10.
Review of courts-martial, see sections 859 to 876 of Title 10.
Trial procedure, see sections 836 to 854 of Title 10.

§ 327. General courts-martial of National Guard not in Federal service

(a) In the National Guard not in Federal service, general courts-martial may be convened by the President or by the governor of a State or Territory, Puerto Rico, or the Canal Zone, or by the commanding general of the National Guard of the District of Columbia.

(b) A general court-martial may sentence to—
(1) a fine of not more than $200;
(2) forfeiture of pay and allowances;
(3) a reprimand;
(4) dismissal or dishonorable discharge;
(5) reduction of a noncommissioned officer to the ranks; or
(6) any combination of these punishments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 608.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
327(a).....	32:92 (1st 46 words).	June 3, 1916, ch. 134,
327(b).....	32:92 (less 1st 46 words).	§ 103, 39 Stat. 208.

In subsection (a), the words "Federal service" are substituted for the words "service of the United States".

In subsection (b), the words "A general court-martial may sentence to—" are substituted for the words "and such courts shall have the power to impose * * * to sentence". The words "any combination of these punishments" are substituted for the words "or any two or more of such punishments may be combined in the sentences imposed by such courts".

CROSS REFERENCES

Uniform Code of Military Justice—
Generally, see section 801 et seq. of Title 10, Armed Forces.
Convening general courts-martial, see section 822 of Title 10.
Jurisdiction of general courts-martial, see section 818 of Title 10.
Sentences, generally, see sections 855 to 858a of Title 10.

§ 328. Special courts-martial of National Guard not in Federal service

(a) In the National Guard not in Federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority.

(b) A special court-martial may not try a commissioned officer.

(c) A special court-martial has the same powers of punishment as a general court-martial, except that a fine imposed by a special court-martial may not be more than $100 for a single offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 608.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
328(a).....	32:93 (less last sentence).	June 3, 1916, ch. 134, § 104, 39 Stat. 208.
328(b).....	32:93 (1st 32 words of last sentence).	
328(c).....	32:93 (last sentence, less 1st 32 words).	

In subsection (a), the words "Federal service" are substituted for the words "service of the United States". The words "where troops are on duty" are inserted for clarity. The words "for his command" are omitted, since they cast doubt on the right of a court-martial to try others than members of the command of the appointing authority. The words "air base, auxiliary air base", "wing, group", and "detached squadron" are inserted to clarify the applicability of the revised section to Air Force organizations. The words "convene" and "convened" are substituted for the words "appoint" and "appointed" to conform to 32:92 and similar provisions of section 823 of title 10 (article 23 of the Uniform Code of Military Justice). The words "when by the latter deemed advisable" are omitted as surplusage.

In subsection (b), the positive authority of a special court-martial to try any person subject to military law is omitted as covered by section 326 of this title.

In subsection (c), the words "for a single offense" are inserted for clarity.

CROSS REFERENCES

Uniform Code of Military Justice—
Generally, see section 801 et seq. of Title 10, Armed Forces.
Convening special courts-martial, see section 823 of Title 10.
Jurisdiction of special courts-martial, see section 819 of Title 10.
Sentences, generally, see sections 855 to 858a of Title 10.

§ 329. Summary courts-martial of National Guard not in Federal service

(a) In the National Guard not in Federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

(b) A summary court-martial may sentence to a fine of not more than $25 for a single offense, to forfeiture of pay and allowances, and to reduction of a noncommissioned officer to the ranks.

(Aug. 10, 1956, ch. 1041, 70A Stat. 608.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
329(a).....	32:94 (words before 1st semi-colon of 1st sentence, and 1st 8 words of last sentence).	June 3, 1916, ch. 134, § 105, 39 Stat. 208.
329(b).....	32:94 (less words before 1st semicolon of 1st sentence, and less 1st 8 words of last sentence).	

In subsection (a), the words "Federal service" are substituted for the words "service of the United States" The words "where troops are on duty" and "commissioned" are inserted for clarity. The words "air base, auxiliary air base", "wing, group", and "detached squadron" are inserted to clarify the applicability of the revised section to Air Force organizations. The word "convene" is substituted for the word "appoint" to conform to 32:92 and similar provisions of section 824 of title 10 (article 24 of the Uniform Code of Military Justice). The word "corps", referring to those corps covered by 32:192 and 193, is omitted as covered by the words "other detachment". The words "who shall have power to administer oaths and to try the enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations" are omitted as covered by section 326 of this title.

In subsection (b), the words "and the minutes thereof shall be the same as prescribed for summary courts of the Army of the United States" are omitted as covered by section 326 of this title.

CROSS REFERENCES

Uniform Code of Military Justice—
Generally, see section 801 et seq. of Title 10, Armed Forces.
Convening summary courts-martial, see section 824 of Title 10.
Jurisdiction of summary courts-martial, see section 820 of Title 10.
Sentences, generally, see sections 855 to 858a of Title 10.

§ 330. Confinement instead of fine

In the National Guard not in Federal service, a court-martial may, instead of imposing a fine, sentence to confinement for not more than one day for each dollar of the authorized fine.

(Aug. 10, 1956, ch. 1041, 70A Stat. 609.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
330	32:95.	June 3, 1916, ch. 134, § 106, 39 Stat. 209.

The words "Federal service" are substituted for the words "service of the United States". The words "including summary courts" and "authorized to be imposed" are omitted as surplusage. The words "may sentence * * * to confinement not more than" are substituted for the words "shall have power to sentence to confinement * * * *Provided*, That such sentences of confinement shall not exceed".

§ 331. Dismissal or dishonorable discharge

In the National Guard not in Federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the governor of the State or Territory, Puerto Rico, or the Canal Zone, whichever is concerned, or, in the case of the National Guard of the District of Columbia, by its commanding general.

(Aug. 10, 1956, ch. 1041, 70A Stat. 609.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
331	32:96.	June 3, 1916, ch. 134, § 107, 39 Stat. 209.

The words "Federal service" are substituted for the words "service of the United States". The words "from the service" and "imposed by a * * * court-martial" are omitted as surplusage.

§ 332. Compelling attendance of accused and witnesses

In the National Guard not in Federal service, the president of a court-martial or a summary court officer may—

(1) issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(2) issue subpenas duces tecum and other subpenas;

(3) enforce by attachment the attendance or witnesses and the production of books and papers; and

(4) sentence for refusal to be sworn or to answer, as provided in actions before civil courts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 609.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
332	32:97 (1st par.).	June 3, 1916, ch. 134, § 108, (1st par.), 39 Stat. 209.

The words "Federal service" are substituted for the words "service of the United States". The word "may" is substituted for the words "shall have power". The words "for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order" are substituted for the words "to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing * * * a copy of the charge or charges having been delivered to the accused with such order".

CROSS REFERENCES

Apprehension and restraint of persons subject to Uniform Code of Military Justice, see sections 807 to 814 of Title 10, Armed Forces.

§ 333. Execution of process and sentence

In the National Guard not in Federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the States concerned. In a State where no provision is made for executing those processes and sentences, and in the Territories, Puerto Rico, the Canal Zone, and the District of Columbia, the process or sentence shall be executed by a United States marshal or deputy marshal, who shall make a return to the military officer issuing the process or the court imposing the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 609.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
333	32:94 (less 1st par.).	June 3, 1916, ch. 134, § 108 (less 1st par.), 39 Stat. 209.

The words "In the National Guard not in Federal service * * * its courts-martial" are substituted for the words "said courts". The words "executing those processes and sentences" are substituted for the words "such action". The words "deputy marshal" are substituted for the words "his duly appointed deputy". The words "and it shall be the duty of any United States marshal to execute all such processes and sentences" are omitted as surplusage.

CROSS REFERENCES

Apprehension and restraint of persons subject to Uniform Code of Military Justice, see sections 807 to 814 of Title 10, Armed Forces.

§ 334. Payment of malpractice liability of National Guard Medical personnel

(a) Upon the final disposition of any claim for damages for personal injury, including death,

caused by the negligent or wrongful act or omission of any medical personnel of the National Guard in furnishing medical care or treatment while acting within the scope of his duties for the National Guard during a training exercise, the liability of such medical personnel for any costs, settlement, or judgment shall become, subject to the provisions of this section, the liability of the United States and shall be payable under the provisions of section 1302 of the Act of July 27, 1956 (31 U.S.C. 724a), or out of funds appropriated for the payment of such liability.

(b) The liability for any claim for damages under this section against any medical personnel shall become the liability of the United States only to the extent that the liability of such medical personnel is not covered by insurance, and such liability shall not constitute coinsurance for any purpose.

(c) Liability of the United States for damages against any medical personnel referred to in subsection (a) shall be subject to the condition that the medical personnel against whom any claim for such damages is made shall—

(1) promptly notify the Attorney General of the claim, and in case of any civil action or proceeding brought in any court against any such personnel, deliver all process served upon such personnel (or an attested true copy thereof) to the immediate superior of such personnel or to such other person designated by the appropriate Adjutant General to receive such papers, who shall promptly transmit such papers to the Attorney General.

(2) furnish to the Attorney General such other information and documents as the Attorney General may request, and

(3) comply with the instructions of the Attorney General relative to the final disposition of a claim for damages.

(d) The liability of the United States under this section shall also be subject to the condition that the settlement of any claim described in subsection (a) of this section be approved by the Attorney General prior to its finalization.

(e) The provisions of this section shall not apply in the case of any claim for damages against any medical personnel settled under the provisions of section 715 of title 32.

(f) As used in this section, the term—

(1) "Medical personnel" means any physician, dentist, nurse, pharmacist, paramedical, or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the Army National Guard or the Air National Guard.

(2) "Training exercise" means training or duty performed by medical personnel under section 316, 502, 503, 504, or 505 of this title or under any other provision of law for which such personnel are entitled to or has waived pay under section 206 of title 37.

(3) "Final disposition" means—

(A) a final judgment of any court from which the Attorney General decides there will be no appeal,

(B) the settlement of any claim, or

(C) a determination at any stage of a claim for damages in favor of a medical personnel and from which determination no appeal can be made.

(4) "Settlement" means any compromise of a claim for damages which is agreed to by the claimant and approved by the Attorney General prior to its finalization.

(5) "Costs" includes any costs which are taxed by any court against any medical personnel, normal litigation expenses, attorney's fees incurred by any medical personnel, and such interest as any medical personnel may be obligated to pay by any court order or by statute.

(6) "Claim for damages" means any claim or any legal or administrative action in connection with any claim described in subsection (a) of this section.

(7) "Attorney General" means the Attorney General of the United States.

(Added Pub. L. 94-464, § 2(b), Oct. 8, 1976, 90 Stat. 1986.)

EFFECTIVE DATE

Section effective Oct. 8, 1976, see section 4 of Pub. L. 94-464, set out as an Effective Date note under section 1089 of Title 10, Armed Forces.

CONGRESSIONAL FINDINGS

Section 2(a) of Pub. L. 94-464 provided that:

"The Congress finds—

"(1) that the Army National Guard and the Air National Guard are critical components of the defense posture of the United States;

"(2) that a medical capability is essential to the performance of the mission of the National Guard when in Federal service;

"(3) that the current medical malpractice crisis poses a serious threat to the availability of sufficient medical personnel for the National Guard; and

"(4) that in order to insure that such medical personnel will continue to be available to the National Guard, it is necessary for the Federal Government to assume responsibility for the payment of malpractice claims made against such personnel arising out of actions or omissions on the part of such personnel while they are performing certain training exercises."

CHAPTER 5—TRAINING

Sec.
501. Training generally.
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§ 501. Training generally

(a) The discipline, including training, of the Army National Guard shall conform to that of the Army. The discipline, including training, of the Air National Guard shall conform to that of the Air Force.

(b) The training of the National Guard shall be conducted by the several States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia in conformity with this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 609.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
501(a).....	32:61 (1st 24 words).	June 3, 1916, ch. 134,
501(b).....	32:61 (less 1st 24 words).	§ 91, 39 Stat. 206.

In subsection (a), the words "that of" are substituted for the words "the system which is or may be prescribed for". The word "Army" is substituted for the words "Regular Army", since the Army is the category for which the discipline and training is prescribed and the Regular Army is a personnel category for which no discipline and training is prescribed. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

CROSS REFERENCES

Army and Air Force training generally, see section 4301 et seq. and 9301 et seq. of Title 10, Armed Forces.

§ 502. Required drills and field exercises

(a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall—

(1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and

(2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

However, no member of such unit who has served on active duty for one year or longer shall be required to participate in such training if the first day of such training period falls during the last one hundred and twenty days of his required membership in the National Guard.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within 30 consecutive days.

(c) The total attendance at the series of formations constituting an assembly shall be counted as the attendance at that assembly for the required period. No member may be counted more than once or receive credit for more than one required period of attendance, regardless of the number of formations that he attends during the series constituting the assembly for the required period.

(d) No organization may receive credit for an assembly for drill or indoor target practice unless—

(1) the number of members present equals or exceeds the minimum number prescribed by the President;

(2) the period of military duty or instruction for which a member is credited is at least one and one-half hours; and

(3) the training is of the type prescribed by the Secretary concerned.

(e) An appropriately rated member of the National Guard who performs an aerial flight under competent orders may receive credit for attending drill for the purposes of this section, if the flight prevented him from attending a regularly scheduled drill.

(f) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may—

(1) without his consent, but with the pay and allowances provided by law; or

(2) with his consent, either with or without pay and allowances;

be ordered to perform training or other duty in addition to that prescribed under subsection (a). Duty without pay shall be considered for all purposes as if it were duty with pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 610; Oct. 3, 1964, Pub. L. 88-621, § 1(1), 78 Stat. 999; Dec. 1, 1967, Pub. L. 90-168, § 4, 81 Stat. 526; Nov. 17, 1971, Pub. L. 92-156, title III, § 303(b), 85 Stat. 425.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
502(a).....	32:62 (1st sentence, less proviso).	June 3, 1916, ch. 134, § 92; restated June 3,
502(b).....	32:62 (proviso of 1st sentence).	1924, ch. 244, § 2; restated Oct. 14, 1940,
502(c).....	32:62 (last sentence, less 1st, 2d, and 3d provisos).	ch. 875, § 2, 54 Stat. 1135; Mar. 25, 1948, ch. 157, § 5(a), 62 Stat.
502(d).....	32:62 (1st proviso of last sentence).	90.
502(e).....	32:62 (2d and 3d provisos of last sentence).	

In subsection (a), the words "including target practice" and "such company, troop, battery, or detachment shall have been * * * from participation in any part thereof" are omitted as surplusage.

In subsections (a) and (b), the word "troop" is omitted as obsolete.

In subsection (b), the words "parts of those organizations" are substituted for the words "subdivisions or parts thereof". The words "but in the latter case", "of subdivisions or groups", "comprehend", and "the time limit of" are omitted as surplusage.

In subsection (c), the word "member" is substituted for the words "officer, warrant officer, or enlisted man". The words "series of formations" are substituted for the words "separate consecutive formations announced". The words "regardless of the number of formations that he attends during the series" are substituted for the words "even though he may have attended more than one of the formations". The words "sum", "actual military", and "of time" are omitted as surplusage. 32:62 (4th proviso of last sentence) is omitted as superseded by section 683 of title 10. 32:62 (last proviso of last sentence) is omitted as superseded by section 501(b) of the Career Compensation Act of 1949, 63 Stat. 826 (37 U.S.C. 301(b)).

In subsection (d), the word "members" is substituted for the words "officers and enlisted men". The words "for which a member is credited" are substituted for the words "participated in by each officer and enlisted man at each assembly at which he shall be credited as having been present". The words "for duty at such assembly", "actual", and "character of" are omitted as surplusage.

In subsection (e), the word "member" is substituted for the words "officer or enlisted man". The words "Air Corps * * * assigned to an Air Corps unit thereof,

or * * * an officer or enlisted man of the Medical Department of the said National Guard regularly attached to an Air Corps unit of the National Guard by appropriate authority" are omitted, since the revised subsection applies only to members who perform flights under competent orders and who are thereby prevented from attending a regular drill.

AMENDMENTS

1971—Subsec. (a). Pub. L. 92-156 inserted exception to training requirements where member served on active duty for one year or more if the training period falls during last one hundred and twenty days of required membership in National Guard.

1967—Subsec. (b). Pub. L. 90-168 substituted 30 consecutive days for seven consecutive days of the same calendar month as the time within which all parts of the unit must be included in a series of formations in order to be credited as an assembly for drill and instruction.

1964—Subsec. (f). Pub. L. 88-621 added subsec. (f).

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90-168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90-168, set out as an Effective Date of 1967 Amendment note under section 136 of Title 10, Armed Forces.

CROSS REFERENCES

Appropriations for pay, disbursement and accounting, see section 698a of Title 31, Money and Finance.

Compensation for disablement during training, see section 318 of this title.

Compensation for disablement during training when not covered by section 318 of this title, see section 319 of this title.

Credit for service as members of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3686 and 8686 of Title 10, Armed Forces.

Death gratuity, see section 321 of this title.

Hospitalization, when Secretary may require, see section 320 of this title.

Inactive duty training, duty (other than full-time duty) under this section as, see section 101 of Title 38, Veterans' Benefits.

Pay grades of National Guard personnel on active duty, see section 204 of Title 37, Pay and Allowances of the Uniformed Services.

Rank, commissioned officers on active duty, see sections 3571 and 8571 of Title 10, Armed Forces.

Training duty compensation of members of National Guard, see section 206 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 318, 320, 321, 334, 715 of this title; title 5 sections 3551, 5517, 6323; title 10 sections 268, 701, 1208, 1332, 1333, 3571, 3686, 8571, 8686; title 37 section 204; title 38 sections 101, 765, 2024, title 50 App. section 456.

§ 503. Participation in field exercises

(a) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force, as the case may be, may provide for the participation of the National Guard in encampments, maneuvers, outdoor target practice, or other exercises for field or coast-defense instruction, independently of or in conjunction with the Army or the Air Force, or both.

(b) Amounts necessary for the pay, subsistence, transportation, and other proper expenses of any part of the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia participating in an exercise under subsection (a) may be set aside from funds allocated to it from appropriations for field or coast-defense instruction.

(c) Members of the National Guard participating in an exercise under subsection (a) may, after being mustered, be paid for the period beginning with the date of leaving home and ending with the date of return, as determined in advance. If otherwise correct, such a payment passes to the credit of the disbursing officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 610.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
503(a).....	32:63 (1st 56 words).	June 3, 1916, ch. 134, §§ 94 (less last 43 words after semicolon), 98, 39 Stat. 206, 207.
503(b).....	32:63 (less 1st 56 words).	
503(c).....	32:158.	

In subsection (a), the words "the whole or any part" and "any part of" are omitted as surplusage. The word "Army" is substituted for the words "Regular Army", since the Army is the category that participates in the exercises, and the Regular Army is a personnel category only. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

In subsection (b), the words "Amounts necessary" are substituted for the words "such portion of said funds as may be necessary". The words "participating in an exercise under subsection (a)" are substituted for the words "as shall participate in such encampments, maneuvers, or other exercises, including outdoor target practice, for field and coast-defense instruction". The words "allocated to it from appropriations for field or coast-defense instruction" are substituted for the words "appropriated for that purpose and allocated to any State, Territory, or the District of Columbia".

In subsection (c), the words "Members of the National Guard participating in an exercise under subsection (a)" are substituted for the words "When any portion of the National Guard shall participate in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction, under the provisions of this title". The words "duly", "at any time", "rendezvous", "both dates inclusive", and "making the same" are omitted as surplusage.

CROSS REFERENCES

Compensation for disablement during training, see section 318 of this title.

Compensation for disablement during training when not covered by section 318 of this title, see section 319 of this title.

Credit for service as members of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3686 and 8686 of Title 10, Armed Forces.

Death gratuity, see section 321 of this title.

Hospitalization, when Secretary may require, see section 320 of this title.

Inactive duty training, duty (other than full-time duty) under this section as, see section 101 of Title 38, Veterans' Benefits.

Pay grades of National Guard personnel on active duty, see section 204 of Title 37, Pay and Allowances of the Uniformed Services.

Rank, commissioned officers on active duty, see sections 3571 and 8571 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 318, 319, 320, 321, 334, 715 of this title; title 5 sections 3551, 6323; title 10 sections 701, 1208, 1332, 1333, 3571, 3686, 8571, 8686; title 37 section 204; title 38 sections 101, 765, 2024.

§ 504. National Guard schools and small arms competitions

(a) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, members of the National Guard may—

(1) attend schools conducted by the Army or the Air Force, as appropriate;

(2) conduct or attend schools conducted by the National Guard; or

(3) participate in small arms competitions.

(b) Activities authorized under subsection (a) for members of the National Guard of a State or territory, Puerto Rico, the Canal Zone, or the District of Columbia may be held inside or outside its boundaries.

(Aug. 10, 1956, ch. 1041, 70A Stat. 611; Oct. 3, 1964, Pub. L. 88-621, § 1(2), 78 Stat. 999.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
504(a).....	32:64 (1st sentence).	June 3, 1916, ch. 134,
504(b).....	32:64 (less 1st sentence).	§ 97 (less last sentence); restated May 28, 1926, ch. 417, § 2 (less last sentence), 44 Stat. 674.

In subsection (a), the word "members" is substituted for the words "officers, warrant officers, and enlisted men". The words "for the purpose" and "for that purpose" are omitted as surplusage.

In subsection (b), the words "Assemblies under subsection (a)" are substituted for the words "such assemblages". The words "for members of the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia * * * inside or outside of its boundaries" are substituted for the words "either within or without the State, Territory, or District of Columbia, to which the members of the National Guard designated to attend them shall belong".

AMENDMENTS

1964—Pub. L. 88-621 substituted provisions authorizing the Secretaries of the Army and of the Air Force to issue regulations, for provisions authorizing the President to issue regulations, and provided that members of the National Guard may conduct or attend schools conducted by the National Guard.

CROSS REFERENCES

Compensation for disablement during training, see section 318 of this title.

Compensation for disablement during training when not covered by section 318 of this title, see section 319 of this title.

Credit for service as members of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3686 and 8686 of Title 10, Armed Forces.

Death gratuity, see section 321 of this title.

Hospitalization, when Secretary may require, see section 320 of this title.

Inactive duty training, duty (other than full-time duty) under this section as, see section 101 of Title 38, Veterans' Benefits.

Pay grades of National Guard personnel on active duty, see section 204 of Title 37, Pay and Allowances of the Uniformed Services.

Rank, commissioned officers on active duty, see sections 3571 and 8571 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 318, 319, 320, 321, 334, 715 of this title; title 5 sections 3551, 6323; title 10 sections 701, 1208, 1332, 1333, 3571, 3686, 8571, 8686; title 37 section 204; title 38 sections 101, 765, 2024.

§ 505. Army and Air Force schools and field exercises

Under such regulations as the President may prescribe and upon the recommendation of the governor of any State or Territory, Puerto Rico, or the Canal Zone, or of the commanding general of the National Guard of the District of Columbia, the Secretary of the Army may authorize a limited number of members of its Army National Guard to—

(1) attend any service school except the United States Military Academy, and to pursue a regular course of study at the school; or

(2) be attached to an organization of the branch of the Army corresponding to the organization of the Army National Guard to which the member belongs, for routine practical instruction at or near an Army post during field training or other outdoor exercise.

Similarly, the Secretary of the Air Force may authorize a limited number of members of the Air National Guard to—

(1) attend any service school except the United States Air Force Academy, and to pursue a regular course of study at the school; or

(2) be attached to an organization of the Air Force corresponding to the organization of the Air National Guard to which the member belongs, for routine practical instruction at an air base during field training or other outdoor exercise.

(Aug. 10, 1956, ch. 1041, 70A Stat. 611.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
505.....	32:65.	June 3, 1916, ch. 134, § 99 (1st 133 words); restated Sept. 22, 1922, ch. 423, § 5 (1st 129 words); restated May 28, 1926, ch. 417, § 3 (1st 133 words), 44 Stat. 674.

The words "branch of the Army corresponding" are substituted for the words "same arm, corps, or department", to conform to sections 3063 and 3064 of title 10. In the second sentence, the words "organization of the Air Force corresponding" are substituted for the words "same arm, corps, or department", since the Air Force is not organized by statute into branches, arms, corps, or departments. The word "members" is substituted for the words "officers, warrant officers, and enlisted men". The words "service school" are substituted for the words "military-service school of the United States". Reference to the United States Air Force Academy is inserted to reflect its establishment by the Air Force Academy Act (63 Stat. 47).

CROSS REFERENCES

Compensation for disablement during training, see section 318 of this title.

Compensation for disablement during training when not covered by section 318 of this title, see section 319 of this title.

Credit for service as member of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3686 and 8686 of Title 10, Armed Forces.

Death gratuity, see section 321 of this title.

Hospitalization, when Secretary may require, see section 320 of this title.

Inactive duty training, duty (other than full-time duty) under this section as, see section 101 of Title 38, Veterans' Benefits.

Pay grades of National Guard personnel on active duty, see section 204 of Title 37, Pay and Allowances of the Uniformed Services.

Rank, commissioned officers on active duty, see sections 3571 and 8571 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 318, 319, 320, 321, 715 of this title; title 5 sections 3551, 6323; title 10 sections 701, 1208, 1332, 1333, 3571, 3686, 8571, 8616, 8686; title 37 section 204; title 38 sections 101, 765, 2024.

§ 506. Assignment and detail of members of Regular Army or Regular Air Force for instruction of National Guard

(a) The President shall assign for instruction of the National Guard such members of the Regular Army or the Regular Air Force as he considers necessary.

(b) The Secretary of the Army may detail members of the Regular Army to attend an encampment, maneuver, or other exercise, for field or coast-defense instruction of the Army National Guard. Similarly, the Secretary of the Air Force may detail members of the Regular Air Force to attend exercises for field or coast-defense instruction of the Air National Guard. Members so detailed shall instruct the members of the National Guard at the exercise, as directed by the Secretary concerned, or as requested by the governor or commanding officer of the National Guard there assembled.

(Aug. 10, 1956, ch. 1041, 70A Stat. 611.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
506(a).....	32:66.	
506(b).....	32:67.	
		June 3, 1916, ch. 134, § 81 (1st sentence of 2d par., less 1st 7 words); added June 4, 1920, ch. 227, subch. I, § 44 (5th sentence, less 1st 6 words); restated Sept. 22, 1922 ch. 423, § 4 (6th sentence, less 1st 6 words); restated Feb. 28, 1925, ch. 371, § 3 (6th sentence, less 1st 6 words); restated June 15, 1933, ch. 87, § 16 (1st sentence of 2d par., less 1st 7 words), 48 Stat. 160. June 3, 1916, ch. 134, § 96, 39 Stat. 207.

In subsection (a), the words "members of the Regular Army and the Regular Air Force" are substituted for the words "officers of the Regular Army" and "enlisted men of the Regular Army".

In subsection (b), the words "members" is substituted for the words "officers and enlisted men". The words "one or more", "information", and "encampment, maneuver, or other" are omitted as surplusage.

CROSS REFERENCES

Pay grades of National Guard personnel on active duty, see section 204 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 204.

§ 507. Instruction in firing; supply of ammunition

Ammunition for instruction in firing and for target practice may be furnished, in such amounts as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, to units of the National Guard encamped at a post, camp, or air base. The instruction shall be under the direction of a commissioned officer selected for that purpose by the proper military commander.

(Aug. 10, 1956, ch. 1041, 70A Stat. 612.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
507.....	32:71.	Jan. 21, 1903, ch. 196, § 21, 32 Stat. 779.

The words "post camp, or air base" are substituted for the words "military post or camp". The words "such amounts" are omitted as surplusage. The word "National Guard" are substituted for the words "troops of the militia", since the source statute historically applied only to the organized militia (see opinion of the Judge Advocate General of the Army (JAGA 1952/4374, 9 July 1952)). The word "commissioned" is inserted, since 32:71 historically applied only to commissioned officers (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)).

CHAPTER 7—SERVICE, SUPPLY, AND PROCUREMENT

Sec.
701. Uniforms, arms, and equipment to be same as Army or Air Force.
702. Issue of supplies.

Sec.
703. Purchases of supplies by States from Army or Air Force.
704. Accountability: relief from upon order to active duty.
705. Purchase of uniforms and equipment by officers of National Guard from Army or Air Force.
706. Return of arms and equipment upon relief from Federal service.
707. Use of public buildings for offices by instructors.
708. Property and fiscal officers.
709. Technicians: employment, use, status.
710. Reports of survey.
711. Disposition of obsolete or condemned property.
712. Disposition of proceeds of condemned stores issued to National Guard.
713. Official mail: free transmission.
714. Final settlement of accounts: deceased members.
715. Property loss; personal injury or death: activities under certain sections of this title.
716. Claims for overpayment of pay and allowances, other than travel and transportation allowances.

AMENDMENTS

1972—Pub. L. 92-453, § 2(2), Oct. 2, 1972, 86 Stat. 759, added item 716.

1968—Pub. L. 90-486, § 2(2), Aug. 13, 1968, 82 Stat. 756, substituted in item 709 "Technicians: employment, use status." for "Caretakers and clerks."

1960—Pub. L. 86-740, § 1(2), Sept. 13, 1960, 74 Stat. 879, added item 715.

1958—Pub. L. 85-861, § 2(13), Sept. 2, 1958, 72 Stat. 1546, added item 714.

CROSS REFERENCES

Fraud, purchase or receipt of National Guard property, see section 1024 of Title 18, Crimes and Criminal Procedure.

General military law, Army and Air Force provisions, see sections 2201 et seq., 4501 et seq., and 9501 et seq. of Title 10, Armed Forces.

§ 701. Uniforms, arms, and equipment to be same as Army or Air Force

So far as practicable, the same types of uniforms, arms, and equipment as are issued to the Army shall be issued to the Army National Guard, and the same types of uniforms, arms, and equipment as are issued to the Air Force shall be issued to the Air National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 612.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
701	32:31.	June 3, 1916, ch. 134, § 82; restated June 15, 1933, ch. 87, § 17, 48 Stat. 160.

The words "shall be issued" are substituted for the words "shall * * * be uniformed, armed, and equipped with". The words "as are issued" are substituted for the words "as are or shall be provided". The word "Army" is substituted for the words "Regular Army", since the Army is the category to which uniforms, arms, and equipment are issued, and the Regular Army is a personnel category only. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

CROSS REFERENCES

Clothing for members of Army and Air Force, see sections 4562 and 9562 of Title 10, Armed Forces.

§ 702. Issue of supplies

(a) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force may buy or manufacture and, upon requisition of the governor of any State or Territory, Puerto Rico, or the Canal Zone, or the commanding general of the National Guard of the District of Columbia, issue to its Army National Guard and Air National Guard, respectively, the supplies necessary to uniform, arm, and equip that Army National Guard or Air National Guard for field duty.

(b) Whenever the Secretary concerned is satisfied that the Army National Guard or the Air National Guard, as the case may be, of any State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia is properly organized, armed, and equipped for field duty, funds allotted to that jurisdiction for its Army National Guard or Air National Guard may be used to buy any article issued by the Army or the Air Force, as the case may be.

(c) Under such regulations as the President may prescribe, the issue of new types of equipment, small arms, or field guns to the National Guard of any State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia shall be without charge against appropriations for the National Guard.

(d) No property may be issued to the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, unless that jurisdiction makes provision, satisfactory to the Secretary concerned, for its protection and care.

(Aug. 10, 1956, ch. 1041, 70A Stat. 612.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
702(a)	32:33 (less provisos).	June 3, 1916, ch. 134, §§ 83, 84, 39 Stat. 203, 204.
702(b)	32:33 (last proviso).	
702(c)	32:35.	
702(d)	32:33 (1st proviso).	

In subsection (a), the word "supplies" is substituted for the detailed description of stores, material, and equipment, since under section 101(12) of this title, "supplies" includes stores, material, and equipment. The words "may buy or manufacture" are substituted for the words "is authorized to procure * * * by purchase or manufacture". The words "within the limits of available appropriations made by Congress" and "from time to time" are omitted as surplusage.

In subsection (b), the words "the Secretary concerned is satisfied" are substituted for the words "it shall be shown to the satisfaction of the Secretary of the Army". The words "buy any article issued by the Army or the Air Force" are substituted for the words "purchase, from the Department of the Army, of any article issued by any of the supply departments of the Army".

In subsection (c), the words "the issue of" are substituted for the words "whenever * * * shall have been

issued * * * shall be furnished". The words "shall be without charge" are substituted for the words "without charging the cost or value thereof or any expense connected therewith". The words "provided for the support" are omitted as surplusage.

In subsection (d), the words "No property may be issued to * * * unless that jurisdiction" are substituted for the words *"Provided,* That as a condition precedent to the issue of any property as provided for by this title" and "desiring such issue".

CROSS REFERENCES

Reserve components, issue of supplies, services, and facilities to, see section 2511 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2511.

§ 703. Purchases of supplies by States from Army or Air Force

(a) Subject to the approval of the Secretary of the Army, any State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia may buy from the Department of the Army, for its National Guard or the officers thereof, supplies and military publications furnished to the Army, in addition to other supplies issued to its Army National Guard. On the same basis, it may buy similar property from the Department of the Air Force. A purchase under this subsection shall be for cash, at cost plus transportation.

(b) In time of actual or threatened war, the United States may requisition for military use any property bought under subsection (a). Credit for the return in kind of property so requisitioned shall be given to the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia from which it is received.

(c) Proceeds of sales by the Department of the Army and the Department of the Air Force under this section shall be credited to the appropriations from which the property was purchased, shall not be covered into the Treasury, and may be used to replace property sold under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
703(a)	32:39 (1st sentence).	June 3, 1916, ch. 134, § 86, 39 Stat. 204.
703(b)	32:39 (proviso of last sentence). 32:39a.	June 23, 1910, ch. 370, 36 Stat. 603.
703(c)	32:39 (less 1st sentence, and less proviso of last sentence).	

In subsection (a), the words "stores * * * matériel" are omitted as covered by the word "supplies". The words "other supplies issued" are substituted for the words "those issued under the provisions of this title". The words "at cost plus transportation" are substituted for the words "at the price at which they shall be listed to the Army, with cost of transportation added".

In subsection (b), 32:39a (less last 23 words) is omitted as obsolete and superseded by 32:39 (proviso of last sentence). The Act of June 23, 1910, ch. 370 (less proviso), not contained in 32:39a, is omitted from the revised section as executed. The words "bought under subsection (a)" are substituted for the words "so purchased". The words "for military use" are substituted for the words "for use in the military service thereof". The words "and when so requisitioned by the United States and delivered" and "ultimate" are omitted as surplusage.

In subsection (c), the words "Proceeds of sales by the Department of the Army and the Department of the Air Force under this section" are substituted for the words "The funds received from such sale". The words "from which the property was purchased" are substituted for the words "to which they shall belong". The words "may be used to replace property sold under this section" are substituted for the words "shall be available until expended to replace therewith the supplies sold to the States in the manner herein authorized".

§ 704. Accountability: relief from upon order to active duty

Upon ordering any part of the Army National Guard of the United States or the Air National Guard of the United States to active duty, the President may, upon such terms as he may prescribe, relieve the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned, of accountability for property of the United States previously issued to it for the use of that part.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
704	50:1121.	July 9, 1952, ch. 608, § 711, 66 Stat. 504.

The words "to active duty" are substituted for the words "into the active military service of the United States". The word "conditions" is omitted as covered by the word "terms". The word "previously" is substituted for the word "theretofore". The word "liability" is omitted as covered by the word "accountability". The words "that part" are substituted for the words "such portion of the National Guard of the United States or of the Air National Guard of the United States".

§ 705. Purchase of uniforms and equipment by officers of National Guard from Army or Air Force

Officers of the Army National Guard not in Federal service may buy articles of individual clothing and equipment from the Department of the Army, under such regulations as the Secretary of the Army may prescribe. On the same basis, officers of the Air National Guard not in Federal service may buy those items from the Department of the Air Force. Purchases under this section shall be for cash, at average current costs, including overhead, as determined by the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
705	32:156.	June 3, 1916, ch. 134, § 109; restated June 4, 1920, ch. 227, subch. 1, § 47; restated June 3, 1924, ch. 244, § 3; restated Oct. 14, 1940, ch. 875, § 3, 54 Stat. 1136; Mar. 25, 1948, ch. 157, § 5(b), 62 Stat. 91; Oct. 12, 1949, ch. 681, § 501(f)(2) and (3) (as applicable to § 109 of the Act of June 3, 1916, ch. 134), 63 Stat. 827; July 9, 1952, ch. 608, § 803 (12th par.), 66 Stat. 505.

The reference to 10:1106 is omitted, since that section related only to sales of uniforms and equipment to cadets at the United States Military Academy. The reference to 10:904 is omitted as covered by the language of the revised section. The words "at average current costs, including overhead, as determined by the Secretary concerned" are inserted to reflect sections 4621 and 9621 of title 10, which apply to all sales of individual clothing and equipment. The words "articles of individual clothing and equipment" are substituted for the words "uniforms, accouterments, and equipment". The words "active and inactive", "on proper identification", and "rules and" are omitted as surplusage.

CROSS REFERENCES

Sale of serviceable material to members of Army or Air Force, see sections 4621 and 9621 of Title 10, Armed Forces.

§ 706. Return of arms and equipment upon relief from Federal service

So far as practicable, whenever units, organizations, or members of the National Guard are returned to their National Guard status under section 325(b) of this title, arms and equipment that the Secretary concerned determines are sufficient to accomplish their peacetime mission shall be returned with them.

(Aug. 10, 1956, ch. 1041, 70A Stat. 613.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
706	50:1122(b) (last words.)	17 July 9, 1952, ch. 608, § 712(b) (last 17 words), 66 Stat. 504.

The words "So far as practicable" are inserted, since sufficient arms and equipment might not be available.

§ 707. Use of public buildings for offices by instructors

Whenever practicable, instructors of the National Guard shall use State armories or other public buildings for offices.

(Aug. 10, 1956, ch. 1041, 70A Stat. 614.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
707	32:74.	May 12, 1917, ch. 12 (10th proviso under "National Guard"), 40 Stat. 68.

The word "instructors" is substituted for the words "inspector-instructors", since there are no longer any "inspector-instructors".

§ 708. Property and fiscal officers

(a) The governor of each State and Territory, Puerto Rico, and the Canal Zone, and the commanding general of the National Guard of the District of Columbia, shall appoint, designate or detail, subject to the approval of the Secretary of the Army and the Secretary of the Air Force, a qualified commissioned officer of the National Guard of that jurisdiction who is also a commissioned officer of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, to be the property and fiscal officer of that jurisdiction. If the officer is not on active duty, the President may order him to active duty, with his consent, to serve as a property and fiscal officer.

(b) Each property and fiscal officer shall—

[(1) Repealed. Pub. L. 92-310, title II, § 207, June 6, 1972, 86 Stat. 203.]

(2) receipt and account for all funds and property of the United States in the possession of the National Guard for which he is property and fiscal officer; and

(3) make returns and reports concerning those funds and that property, as required by the Secretary concerned.

(c) When he ceases to hold that assignment, a property and fiscal officer resumes his status as an officer of the National Guard.

(d) The Secretary concerned shall have an inspection of the accounts and records of each property and fiscal officer pertaining to his department made by an Inspector General of his department at least once during each year.

(e) The Secretaries shall prescribe a maximum grade, commensurate with the functions and responsibilities of the office, but not above colonel, for the property and fiscal officer of the United States for the National Guard of each State or Territory, Puerto Rico, the Canal Zone, and the District of Columbia.

(f) The Secretary of the Army and the Secretary of the Air Force shall prescribe joint regulations necessary to carry out subsections (a)—(e).

(g) A property and fiscal officer may intrust money to an officer of the National Guard to make disbursements as his agent. Both the officer to whom money is intrusted, and the property and disbursing officer intrusting the money to him, are pecuniarily responsible for that money to the United States. The agent officer is subject, for misconduct as an agent, to the liabilities and penalties prescribed by law in like cases for the property and fiscal officer for whom he is acting.

(Aug. 10, 1956, ch. 1041, 70A Stat. 614; June 6, 1972, Pub. L. 92-310, title II, § 207, 86 Stat. 203.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
708(a)	32:49 (last sentence; and 2d sentence, less last 24 words).	June 3, 1916, ch. 134, § 67 (last par.), 39 Stat. 200; July 9, 1918,
708(b)	32:49 (3d and 4th sentences).	ch. 143, subch. III (last par.); restated
708(c)	32:49 (last 24 words of 2d sentence).	July 6, 1954, ch. 462, 68 Stat. 451.
708(d)	32:49 (5th and 6th sentences).	June 3, 1924, ch. 244, § 5, 43 Stat. 365; July
708(e)	32:49 (last sentence, less 1st 18 words).	6, 1954, ch. 462, 68 Stat. 451.
708(f)	32:49 (1st 18 words of last sentence).	
708(g)	32:50.	

In subsection (b)(1), the words "the duties of that assignment" are substituted for the words "his duties as property and fiscal officer". The words "be required to" are omitted as surplusage.

In subsection (b)(2), the words "of the National Guard for which he is property and fiscal officer" are substituted for the words "of the National Guard or Air National Guard of the State, Territory, or District of Columbia".

In subsection (c), 32:49 (5th sentence) is omitted, since the officer concerned would be entitled, under section 201 of the Career Compensation Act of 1949 (37 U.S.C. 232), to the pay and allowances of the grade in which he is serving.

In subsection (e), the words "The Secretaries shall prescribe" are substituted for the words "which rules and regulations shall establish". The word "duties" is omitted as surplusage.

In subsection (f), the words "rules and" and "the provisions of" are omitted as surplusage.

In subsection (g), the words "Under such regulations as may be prescribed by the Secretary of the Army" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words "an officer" are substituted for the words "other officers", since, under revised subsection (a), the property and fiscal officer is not required to be an officer of the National Guard. The words "accountable for public moneys" and "as agent" are omitted as surplusage.

AMENDMENTS

1972—Subsec. (b)(1). Pub. L. 92-310 repealed provisions which related to the bond required of property and fiscal officers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 771a, 1007.

§ 709. Technicians: employment, use, status

(a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsection (b) of this section persons may be employed as technicians in—

(1) the administration and training of the National Guard; and

(2) the maintenance and repair of supplies issued to the National Guard or the armed forces.

(b) Except as prescribed by the Secretary concerned, a technician employed under subsection (a) shall, while so employed, be a member of the National Guard and hold the military grade specified by the Secretary concerned for that position.

(c) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title, to employ and administer the technicians authorized by this section.

(d) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed therein is required under subsection (b) to be a member of the National Guard.

(e) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned—

(1) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who is separated from the National Guard or ceases to hold the military grade specified for his position by the Secretary concerned shall be promptly separated from his technician employment by the adjutant general of the jurisdiction concerned;

(2) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who fails to meet the military security standards established by the Secretary concerned for a member of a reserve components of the armed force under his jurisdiction may be separated from his employment as a technician and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

(3) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

(4) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;

(5) a right of appeal which may exist with respect to clause (1), (2), (3), or (4) shall not extend beyond the adjutant general of the jurisdiction concerned; and

(6) a technician shall be notified in writing of the termination of his employment as a technician and such notification shall be given at least thirty days prior to the termination date of such employment.

(f) Sections 2108, 3502, 7511, and 7512 of title 5, United States Code, do not apply to any person employed under this section.

(g)(1) Notwithstanding sections 5544(a) and 6102 of title 5, United States Code, or any other provision of law, the Secretary concerned may, in the case of technicians assigned to perform operational duties at air defense sites—

(A) prescribe the hours of duties;

(B) fix the rates of basic compensation; and

(C) fix the rates of additional compensation;

to reflect unusual tours of duty, irregular additional duty, and work on days that are ordinari-

ly nonworkdays. Additional compensation under this subsection may be fixed on an annual basis and is determined as an appropriate percentage, not in excess of 12 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 of the General Schedule under section 5332 of title 5, United States Code.

(2) Notwithstanding sections 5544(a) and 6102 of title 5, United States Code, or any other provision of law, the Secretary concerned may, for technicians other than those described in clause (1) of this subsection, prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5, United States Code, or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(h) In no event shall the number of technicians employed under this section at any one time exceed 53,100, except that the number of technicians so employed may not exceed 49,200 during the fiscal year beginning July 1, 1971.

(Aug. 10, 1956, ch. 1041, 70A Stat. 614; Sept. 13, 1961, Pub. L. 87-224, § 2, 75 Stat. 496; Aug. 13, 1968, Pub. L. 90-486, § 2(1), 82 Stat. 755; Aug. 13, 1971, Pub. L. 92-119, § 2, 85 Stat. 340.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
709(a)	32:42 (1st par.).	June 3, 1916, ch. 134, § 90; restated June 4, 1920, ch. 227, subch. I, § 46; restated Mar. 1, 1922, ch. 90; restated June 6, 1924, ch. 275, § 5; restated May 28, 1926, ch. 417, § 1; Apr. 21, 1928, ch. 397; June 19, 1935, ch. 277, § 6; June 13, 1940, ch. 343 (1st proviso under "National Guard"); restated Oct. 14, 1940, ch. 875, § 1, 54 Stat. 1134. June 25, 1938, ch. 688, 52 Stat. 1173.
	32:42a (less 28 words before 1st proviso).	
709(b)	32:42 (2d par., and last sentence of 4th par.).	
709(c)	32:42 (3d par.).	
709(d)	32:42 (4th par., less last sentence).	
709(e)	32:42 (last par., less proviso).	
709(f)	32:42a (28 words before 1st proviso).	
	32:42 (proviso of last par.).	

In subsection (a), the words "may be spent" are substituted for the words "shall be available". The reference to animals for military purposes and forage, bedding, and other supplies and services for them, is omitted as obsolete, since animals are not now authorized for the National Guard. The word "persons" is substituted for the word "help". The words "Army National Guard" and "Air National Guard" are substituted for the words "organizations of all kinds". The words "the support of" are omitted as surplusage. The words "A caretaker employed under this subsection" are substituted for the words "Moneys hereafter appropriated under the provisions of this title for compensation of help for care of material, animals, armament, and equipment, in the hands of the National Guard of the several States, Territories, and the District of Columbia shall be available for the hire of caretakers". The words "and other duties that do not interfere with the performance of his duties as caretaker" are substituted for 32:42a (1st proviso). 32:42a (2d and 3d provisos) is omitted as executed.

In subsection (b), the words "However, if a unit has more than one caretaker" are substituted for the words "but if there are as many as two caretakers in any unit". The words "under this section", in the first sentence of the revised subsection, are inserted for clarity. The words "under this section", in the second sentence of the revised subsection, are substituted for the words "paid to caretakers who belong to the National Guard, as herein authorized". The words "under any of the provisions of this title" are omitted as surplusage.

In subsection (c), the words "or organizations thereof" are omitted as surplusage.

In subsection (d), the words "one commissioned officer * * * in a grade below major * * * for each pool set up under subsection (c) and for each squadron of the Air National Guard" are substituted for the words "one such officer not above the grade of captain for each heavier-than-air squadron; and one such officer not above the grade of captain for each pool".

In subsection (e), the words "Funds appropriated by Congress" are substituted for the words "Funds hereafter appropriated under the provisions of this title for the support of", in 32:42, and "such moneys", in 32:42a. The words "are in addition to" are substituted for the words "shall be supplemental to", in 32:42, and "may be used as supplemental to", in 32:42a.

In subsection (f), the words "authorized to be employed under this section" are substituted for the words "authorized to be employed". The words "person to employ them" are substituted for the words "by whom they shall be employed". The words "by regulations" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

REFERENCES IN TEXT

Section 6102 of title 5, referred to in subsec. (g), was repealed by Pub. L. 92-392, § 7(a), Aug. 19, 1972, 86 Stat. 573.

AMENDMENTS

1971—Subsec. (h). Pub. L. 92-119 increased the number of technicians employable under the section from 42,500 to 53,100 with the exception that such number is fixed at 49,200 for the fiscal year beginning July 1, 1971.

1968—Pub. L. 90-486 substituted "Technicians: employment, use, status" for "Caretakers and clerks" in the catchline.

Subsec. (a). Pub. L. 90-486 substituted provisions that persons may be employed as technicians in the administration and training of the National Guard and the maintenance and repair of supplies issued to the National Guard or the armed forces for provisions that authorized the Secretaries of the Army and the Air Force to hire, out of funds allotted to them for the Army National Guard and the Air National Guard, respectively competent persons to care for material, armament, and equipment of the Army National Guard and Air National Guard, and provisions that a caretaker so employed may also perform clerical duties incidental to his employment and other duties that do not interfere with the performance of his duties as caretaker.

Subsec. (b). Pub. L. 90-486 substituted provisions requiring, except as prescribed by the Secretary concerned, any technician employed to be a member of the National Guard and hold the military grade specified by the Secretary concerned for that position for provisions permitting civilians as well as enlisted men to be employed as caretakers, provided that if a unit has more than one caretaker, one of them must be an enlisted member, and provisions that any compensation under this section is in addition to compensation otherwise provided for a member of the National Guard.

Subsec. (c). Pub. L. 90-486 substituted provisions authorizing the Secretary concerned to designate adjutants general to employ and administer the technicians authorized by this section for provisions autho-

rizing the Secretary concerned to place in a common pool for care, maintenance, and storage the material, armament, and equipment of the Army National Guard or Air National Guard, with the proviso that not more than 15 caretakers be employed for each pool.

Subsec. (d). Pub. L. 90-486 substituted provisions that a technician employed under subsec. (a) is an employee of the particular department concerned, and an employee of the United States, with the proviso that a position authorized by this section is outside the competitive service if the technician so employed is required under subsec. (b) to be a member of the National Guard, for provisions that one commissioned officer of the National Guard in a grade below major may be employed for each pool set up and for each squadron of the Air National Guard.

Subsec. (e). Pub. L. 90-486 substituted provisions authorizing the adjutant general of the jurisdiction concerned to separate from technicians employment any technician for the specified grounds, provisions requiring the technician concerned to be notified in writing of the termination of his employment at least 30 days prior to the termination date of such employment, and provisions granting a limited right of appeal from such termination, for provisions appropriating funds by Congress for the National Guard as additional to funds appropriated by the several states and territories, etc., and provisions making such funds available for the hire of caretakers and clerks.

Subsec. (f). Pub. L. 90-486 substituted provisions making inapplicable sections 2108, 3502, 7511, and 7512 of Title 5 to any person employed under this section for provisions authorizing the Secretary concerned to fix the salaries of clerks and caretakers and to designate the person to employ them, and provisions authorizing compensation to include the amounts of the employer's contributions to retirement systems.

Subsecs. (g), (h). Pub. L. 90-486 added subsecs. (g) and (h).

1961—Subsec. (f). Pub. L. 87-224 provided that the authorized compensation may include employer's contributions to retirement systems, and that such contributions shall not exceed 6½ per centum of the compensation upon which based.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 11 of Pub. L. 90-486 provided that: "This Act [see Short Title note below] becomes effective January 1, 1969, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after January 1, 1969."

SHORT TITLE

Section 1 of Pub. L. 90-486 provided: "That this Act [which amended this section and section 715 of this title, sections 2105, 8332, 8334, and 8339 of Title 5, Government Organization and Employees, sections 3848, 3851, 8848, and 8851 of Title 10, Armed Forces, and section 418 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under this section] may be cited as the 'National Guard Technicians Act of 1968'."

SAVINGS PROVISIONS FOR ACCRUED CLAIMS; CONVERSION TO FEDERAL EMPLOYEE STATUS; CREDIT FOR PAST SERVICE; LEAVE CREDIT

Section 3 of Pub. L. 90-486 provided that:

"(a) A claim accrued under section 715 of title 32, United States Code, before the effective date of this Act [see effective date note above] by reason of the act or omission of a person employed under section 709 of title 32, United States Code [this section], may, if otherwise allowable, be settled and paid under section 715 of title 32, United States Code.

"(b) Except as provided in this Act and in the amendments made by this Act [see Short Title note above] and notwithstanding any law, rule, regulation, or decision to the contrary, the positions of persons employed under section 709 of title 32, United States Code, existing on the day before the effective date of this Act, and the persons holding those positions on that day, shall, on and after that effective date, be considered to be positions in and employees of the Department of the Army or the Department of the Air Force, as the case may be, and employees of the United States to the same extent as other positions in and employees of the Department of the Army or the Department of the Air Force. Such positions shall be outside the competitive service, if, as a condition of employment, the persons employed therein were, on the day before the effective date of this Act, required to be members of the Army National Guard or the Air National Guard.

"(c) All service under section 709 of title 32, United States Code, or prior corresponding provision of law, performed before the effective date of this Act shall be included and credited in the determination of length of service for the purposes of leave, Federal employees death and disability compensation, group life and health insurance, severance pay, tenure, and status. This subsection shall apply only in the case of persons who perform service under section 709 of title 32, United States Code, on or after the effective date of this Act [see Effective Date note above].

"(d) Annual leave and sick leave to which a technician was entitled on the day before the conversion of his position, as provided in subsection (b) of this section, shall be credited to him in his new position."

PERSONS EMPLOYED PRIOR TO JANUARY 1, 1969, WHOSE EMPLOYMENT WAS COVERED BY CIVIL SERVICE RETIREMENT PROVISIONS

Section 5(d) of Pub. L. 90-486 provided that: "Clause (4) of subsection (a) of this section [which amended section 8332(b) of Title 5, Government Organization and Employees] and subsections (b) and (c) of this section [which amended section 8334(c) and added section 8339(*l*) of title 5] do not apply to any person employed prior to the effective date of this Act [see Effective Date note above] under section 709 of title 32, United States Code, whose employment under that section was covered by subchapter III of chapter 83 of title 5, United States Code."

ELECTION TO REMAIN UNDER STATE RETIREMENT SYSTEM; REEMPLOYED TECHNICIANS; CONTINUATION OF FEDERAL CONTRIBUTIONS

Section 6 of Pub. L. 90-486 provided that:

"(a) Notwithstanding section 709(d) of title 32, United States Code, a person who, on the date of enactment of this Act [Aug. 13, 1968], is employed under section 709 of title 32, United States Code, and is covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, may elect, not later than the effective date of this Act [see Effective Date note above], not to be covered by subchapter III of chapter 83 of title 5, United States Code, and with the consent of the State concerned or Commonwealth of Puerto Rico, to remain covered by the employee retirement system of, or plan sponsored by, that State or the Commonwealth of Puerto Rico. Unless such an election, together with a statement of approval by the State concerned or the Commonwealth of Puerto Rico, is filed with the Secretary of the Army or the Secretary of the Air Force, as appropriate, on or before the effective date of this Act, the person concerned is covered by subchapter III of chapter 83 of title 5, United States Code, as of that date.

"(b) A member of the National Guard of a State or the Commonwealth of Puerto Rico who was employed as a technician under section 709 of title 32, United States Code, or prior corresponding provision of law, who—

"(1) was involuntarily ordered to active duty after January 1, 1968, from that employment and has not been released from that duty prior to the effective date of this Act [see Effective Date note above]; or

"(2) is on active duty under section 265, 3015, 3033, 3496, 8033 or 8496 of title 10, United States Code, on the effective date of this Act;

and was covered by a retirement system or plan of a State or the Commonwealth of Puerto Rico, may, if he is reemployed within sixty days under section 709 of title 32, United States Code, make the election described in subsection (a) of this section, within thirty days following the date of his reemployment.

"(c) In the case of any person who files a valid election under this section to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, the United States may pay the amount of the employer's contributions to that system or plan that become due for periods beginning on or after the effective date of this Act [see Effective Date note above]. However, the payment by the United States, including any contribution that may be made by the United States toward the employer's tax imposed by section 3111 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 3111) may not exceed the amount which the employing agency would otherwise contribute on behalf of the person to the Civil Service Retirement and Disability Fund under section 8334(a) of title 5, United States Code. Notwithstanding section 8332(b) of title 5, United States Code, as amended by section 5 of this Act, the service under section 709 of title 32, United States Code, or prior corresponding provision of law, of a person who has made an election to remain covered by the employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall not be creditable toward eligibility for or amount of annuity under subchapter III of chapter 83 of title 5, United States Code. A person who retires pursuant to his valid election shall not be eligible for any rights, benefits, or privileges to which retired civilian employees of the United States may be entitled."

COMPENSATION RATES; CONVERSION AND ADJUSTMENT OF COMPENSATION TO THE GENERAL SCHEDULE

Section 8 of Pub. L. 90-486 provided that:

"(a) Except as provided in section 709(g) of title 32, United States Code, the Secretary concerned shall fix the rate of basic compensation of positions existing on the date of enactment of this Act [Aug. 13, 1968] in accordance with the General Schedule set forth in section 5332, or under the appropriate prevailing rate schedule in accordance with section 5341 of title 5, United States Code, as applicable. In fixing such rate—

"(1) If the technician is receiving a rate of basic compensation which is less than the minimum rate of the appropriate grade of the General Schedule, or which is less than the minimum rate of the appropriate grade or compensation level of the appropriate prevailing rate schedule, as applicable, in which his position is placed, his basic compensation shall be increased to that minimum rate.

"(2) If the technician is receiving a rate of basic compensation which is equal to a rate of the appropriate grade of the General Schedule, or which is equal to a rate of the appropriate grade or compensation level under the appropriate prevailing rate schedule, as applicable, in which his position is placed, he shall receive basic compensation at that rate of the General Schedule, or at that rate under the prevailing rate schedule, as applicable.

"(3) If the technician is receiving a rate of basic compensation which is between two rates of the appropriate grade of the General Schedule, or which is between two rates of the appropriate grade or compensation level under the appropriate prevailing rate schedule, as applicable, in which his position is placed, he shall receive basic compensation at the higher of those two rates under the General Schedule or appropriate prevailing rate schedule, as applicable.

"(4) If the technician is receiving a rate of basic compensation which is in excess of the maximum rate of the appropriate grade of the General Schedule, or which is in excess of the maximum rate of the appropriate grade or compensation level of the appropriate prevailing rate schedule, as applicable, in which his position is placed, he shall continue to receive basic compensation without change in rate until—

"(A) he leaves that position, or

"(B) he is entitled to receive basic compensation at a higher rate,

but, when any such position becomes vacant, the rate of basic compensation of any subsequent appointee thereto shall be fixed in the manner provided by applicable law and regulation.

"(b) The conversion of positions and employees to appropriate grades of the General Schedule set forth in section 5332 of title 5, United States Code, and the initial adjustment of rates of basic compensation of those positions and technicians, provided for by this Act [see Short Title note above], shall not be considered to be transfers or promotions within the meaning of section 5334(b) of title 5, United States Code, and the regulations issued thereunder.

"(c) Each technician on the effective date of this Act [see Effective Date note above], whose position is converted to the General Schedule set forth in section 5332 of title 5, United States Code, or to the appropriate prevailing rate schedule, as applicable, who prior to the initial adjustment of his rate of basic compensation under subsection (a) of this section, has earned, but has not been credited with, an increase in that rate, shall be granted credit for such increase before his rate of basic compensation is initially adjusted under that subsection.

"(d) Each technician on the effective date of this Act whose position is converted to the General Schedule set forth in section 5332 of title 5, United States Code, or to the appropriate prevailing rate schedule, as applicable, shall be granted credit, for purposes of his first step increase under the General Schedule or prevailing rate schedule, for all satisfactory service performed by him since his last increase in compensation prior to the initial adjustment of his rate of basic compensation under subsection (a) of this section.

"(e) An increase in rate of basic compensation by reason of the enactment of subsection (a) of this section shall not be considered to be an equivalent increase with respect to step increases for technicians whose positions are converted to the General Schedule set forth in section 5332 of title 5, United States Code, or the appropriate prevailing rate schedule under authority of this section."

REGULATIONS: APPROVAL BY SECRETARY OF DEFENSE; UNIFORMITY

Section 10 of Pub. L. 90-486 provided that: "Regulations prescribed by the Secretary of the Army and Secretary of the Air Force under this Act [see Short Title note above] shall be approved by the Secretary of Defense and shall, so far as practicable, be uniform."

NUMBER OF CARETAKERS FOR AIR NATIONAL GUARD

Pub. L. 90-580, title II, § 201, Oct. 17, 1968, 82 Stat. 1124, provided, in part, that the number of caretakers authorized to be employed under this section may be such as is deemed necessary by the Secretary of the Air Force and that they may be employed without regard to their military rank as members of the Air National Guard.

Similar provisions were contained in the following prior acts:

Pub. L. 90-96, title II, § 201, Sept. 29, 1967, 81 Stat. 236.

Pub. L. 89-687, title II, § 201, Oct. 15, 1966, 80 Stat. 985.

Pub. L. 89-213, title II, § 201, Sept. 29, 1965, 79 Stat. 868.

Pub. L. 88-466, title II, § 201, Aug. 19, 1964, 78 Stat. 469.

Oct. 17, 1963, Pub. L. 88-149, title II, § 201, 77 Stat. 259.

Aug. 9, 1962, Pub. L. 87-577, title II, § 201, 76 Stat. 323.
Aug. 17, 1961, Pub. L. 87-144, title II, § 201, 75 Stat. 370.
July 7, 1960, Pub. L. 86-601, title II, § 201, 74 Stat. 344.
Aug. 18, 1959, Pub. L. 86-166, title II, § 201, 73 Stat. 372.
Aug. 22, 1958, Pub. L. 85-724, title V, § 501, 72 Stat. 723.
Aug. 2, 1957, Pub. L. 85-117, title V, § 501, 71 Stat. 322.
July 2, 1956, ch. 488, title V, § 501, 70 Stat. 466.
July 13, 1955, ch. 358, title V, § 501, 69 Stat. 313.
June 30, 1954, ch. 432, title VI, § 601, 68 Stat. 349.
Aug. 1, 1953, ch. 305, title V, § 501, 67 Stat. 349.
July 10, 1952, ch. 630, title V, § 501, 66 Stat. 530.
Oct. 18, 1951, ch. 512, title V, § 501, 65 Stat. 444.
Sept. 6, 1950, ch. 896, ch. X, title V, § 501, 64 Stat. 751.
Oct. 29, 1949, ch. 787, title V, § 501, 63 Stat. 1017.

NUMBER OF CARETAKERS FOR ARMY NATIONAL GUARD

Pub. L. 90-580, title II, § 201, Oct. 17, 1968, 82 Stat. 1124, provided, in part, that the number of caretakers authorized to be employed under this section and those necessary to provide reimbursable services for the military departments, may be such as is deemed necessary by the Secretary of the Army.

Similar provisions were contained in the following prior acts:
Pub. L. 90-96, title II, § 201, Sept. 29, 1967, 81 Stat. 236.
Pub. L. 89-687, title II, § 201, Oct. 15, 1966, 80 Stat. 984.
Pub. L. 89-213, title II, § 201, Sept. 29, 1965, 79 Stat. 867.
Pub. L. 88-446, title II, § 201, Aug. 19, 1964, 78 Stat. 469.
Oct. 17, 1963, Pub. L. 88-149, title II, § 201, 77 Stat. 258.
Aug. 9, 1962, Pub. L. 87-577, title II, § 201, 76 Stat. 322.
Aug. 17, 1961, Pub. L. 87-144, title II, § 201, 75 Stat. 369.
July 7, 1960, Pub. L. 86-601, title II, § 201, 74 Stat. 343.
Aug. 18, 1959, Pub. L. 86-166, title II, § 201, 73 Stat. 371.
Aug. 22, 1958, Pub. L. 85-724, title III, § 301, 72 Stat. 715.
Aug. 2, 1957, Pub. L. 85-117, title III, § 301, 71 Stat. 315.
July 2, 1956, ch. 488, title III, § 301, 70 Stat. 458.
July 13, 1955, ch. 358, title III, § 301, 69 Stat. 305.
June 30, 1954, ch. 432, title IV, § 401, 68 Stat. 340.
Aug. 1, 1953, ch. 305, title III, § 301, 67 Stat. 340.
July 10, 1952, ch. 630, title III, § 301, 66 Stat. 522.
Oct. 18, 1951, ch. 512, title III, § 301, 65 Stat. 435.
Sept. 6, 1950, ch. 896, ch. X, title III, § 301, 64 Stat. 740.
Oct. 29, 1949, ch. 787, title III, § 301, 63 Stat. 1000.
June 24, 1948, ch. 632, 62 Stat. 662.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 564.
July 16, 1946, ch. 583, § 1, 60 Stat. 556.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 715 of this title; title 5 sections 2105, 8332; title 10 sections 3848, 3851, 8848, 8851; title 42 section 418.

§ 710. Reports of survey

(a) All military property issued by the United States to the National Guard remains the property of the United States.

(b) If property issued to the National Guard is lost, damaged, or destroyed, or becomes unserviceable or unsuitable, a survey of the circumstances thereof shall be made by a disinterested commissioned officer of the Regular Army or the Army National Guard detailed by the Secretary of the Army, or by a disinterested commissioned officer of the Regular Air Force or the Air National Guard detailed by the Secretary of the Air Force, as the case may be. The report of the surveying officer shall be sent to the Secretary concerned or to an officer designated by him to receive those reports.

(c) The Secretary concerned or his designated representative may relieve the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned, of further accountability and pecuniary liability for the property. However, if it was lost, damaged, or destroyed through negligence, the money value of the property or the damage thereto shall be charged (1) to the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned, to be paid from its funds or from any non-Federal funds; or (2) to the member to whom the loss, damage, or destruction is charged from pay due him for duties performed in his status as a member of the National Guard.

(d) If property surveyed under this section is found to be unserviceable or unsuitable, the Secretary concerned or his designated representative shall direct its disposition by sale or otherwise. The proceeds of the following under this subsection shall be deposited in the Treasury under section 725c(b)(22) of title 31:

(1) A sale.

(2) A stoppage against a member of the National Guard.

(3) A collection from a person, or from a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, to reimburse the United States for the loss or destruction of, or damage to, the property.

(e) If a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned, neglects or refuses to pay for the loss or destruction of, or damage to, property charged against it under subsection (c), the Secretary concerned may bar it from receiving any part of appropriations for the Army National Guard or the Air National Guard, as the case may be, until the payment is made.

(f) Instead of the procedure prescribed by subsections (b)-(d), property issued to the National Guard that becomes unserviceable through fair wear and tear in service may, under regulations to be prescribed by the Secretary concerned, be sold or otherwise disposed of after an inspection, and a finding of unserviceability because of that wear and tear, by a commissioned officer of the Regular Army or the Regular Air Force, as the case may be, designated by the Secretary. The State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned, is relieved of accountability for that property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 615; Sept. 2, 1958, Pub. L. 85-861, § 33(c)(3), 72 Stat. 1567.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
710(a)	32:47 (1st sentence).	June 3, 1916, ch. 134, § 87; June 3, 1924, ch. 244, § 1; restated Feb. 28, 1925, ch. 371, § 4; restated Aug. 27, 1954, ch. 1014, 68 Stat. 880.
710(b)	32:47 (2d sentence).	
710(c)	32:47 (3d sentence). 32:154 (last proviso of 2d par.).	
710(d)	32:47 (last sentence, less proviso).	June 3, 1916, ch. 134, § 110 (last proviso of 2d par.); restated Sept. 22, 1922, ch. 423, § 6 (last proviso of 2d par.); restated Apr. 6, 1926, ch. 322 (last proviso), 45 Stat. 408.
710(e)	32:47 (1st proviso of last sentence).	
710(f)	32:47 (last proviso of last sentence).	

In subsection (a), the words "as herein provided" are omitted as surplusage.

In subsections (b) and (f), the word "commissioned" is inserted, since 32:47 historically applied only to commissioned officers (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)).

In subsection (b), the words "by use in service or from any other cause" and "surveying" are omitted as surplusage. The words "a survey of the circumstances thereof" are substituted for the word "it".

In subsection (c), the first 12 words of the second sentence are substituted for 32:47 (38th through 77th words of 2d sentence). Clause (2) is substituted for 32:154 (last proviso of 2d par.).

In subsection (d), the last sentence is substituted for 32:47 (words between semicolon and 1st colon of last sentence).

In subsection (e), the words "charged against it under subsection (c)" are substituted for the words "changed against such State, Territory, or the District of Columbia by the Secretary of the Army after survey by a disinterested officer appointed as hereinbefore provided". The words "may bar it from receiving" are substituted for the words "is authorized to debar such State, Territory, or the District of Columbia from further participation in any and all".

In subsection (f), the words "Instead of the procedure prescribed by subsections (b)–(d)" are substituted for the words "and to constitute as to such property a discretional substitute for the examination, report, and disposition provided for elsewhere in this section". The words "a finding of unserviceability because of that wear and tear" are substituted for the words "finding to that effect".

1958 ACT

This change corrects a typographical error.

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–861 substituted "of further" for "or further".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as an Effective Date of 1958 Amendment note under section 101 of Title 10, Armed Forces.

§ 711. Disposition of obsolete or condemned property

Each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia shall, upon receiving new property issued to its National Guard to replace obsolete or condemned issues of property, return the replaced property to the Department of the Army or the Department of the Air Force, as the case may be, or otherwise dispose of it, as the Secretary concerned directs. No money credit may be allowed for property disposed of under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 616.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
711	32:46.	June 3, 1916, ch. 134, § 85, 39 Stat. 204.

The words "to its National Guard" are inserted for clarity. The word "it" is substituted for the words "all property so replaced or condemned". The last sentence is substituted for 32:46 (last 8 words).

§ 712. Disposition of proceeds of condemned stores issued to National Guard

The following shall be covered into the Treasury:

(1) The proceeds from sales of condemned stores issued to the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, and not charged against its allotment.

(2) The net proceeds from collections made from any person to reimburse the United States for the loss or destruction of, or damage to, property described in clause (1).

(3) Stoppage against members of the National Guard for the loss or destruction of, or damage to, property described in clause (1).

(Aug. 10, 1956, ch. 1041, 70A Stat. 616.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
712	32:45.	June 3, 1916, ch. 134, § 88, 39 Stat. 205; Oct. 31, 1951, ch. 654, § 3(5), 65 Stat. 708.

The introductory clause is substituted for the words "shall be covered into the Treasury of the United States" and "as shall also". The words "United States" are substituted for the word "Government". The words "members of the National Guard" are substituted for the words "officers and enlisted men".

§ 713. Official mail: free transmission

Units and headquarters of the National Guard, whether or not in Federal service, have the same privilege of free mailing of official matter as the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 617.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
713	32:196.	Aug. 1, 1953, ch. 305, § 643, 67 Stat. 357.

The word "Hereafter" is omitted as executed. The words "and the Air National Guard" are omitted, since "National Guard", as defined in section 101(2) of this title, includes the Army National Guard and the Air National Guard. The words "Federal service" are sub-

stituted for the words "active service of the United States". The words "mailing of official matter" are substituted for the words "transmission of official mail matter".

§ 714. Final settlement of accounts: deceased members

(a) In the settlement of the accounts of a member of the National Guard who dies after December 31, 1955, an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

(1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.

(2) Surviving spouse.

(3) Children and their descendants, by representation.

(4) Father and mother in equal parts or, if either is dead, the survivor.

(5) Legal representative.

(6) Person entitled under the law of the domicile of the deceased member.

(b) Designations and changes of designation of beneficiaries under subsection (a)(1) are subject to regulations to be prescribed by the Secretary concerned. So far as practicable, these regulations shall be uniform with those prescribed for the armed forces under section 2771(b) of Title 10.

(c) Under such regulations as the Comptroller General may prescribe, payments under subsection (a) shall be made by the Department of the Army or the Department of the Air Force, as the case may be. Payment under clause (6) of subsection (a) shall be made—

(1) upon settlement by the General Accounting Office; or

(2) as otherwise authorized by the Comptroller General.

(d) A payment under this section bars recovery by any other person of the amount paid.

(Added Pub. L. 85–861, § 2(12), Sept. 2, 1958, 72 Stat. 1546, and amended Pub. L. 87–46, June 16, 1961, 75 Stat. 92.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
714(a)	37:361. 37:362. 37:365.	July 12, 1955, ch. 328, §§ 1–3, 4 (less proviso), 5 (1st sentence), 69 Stat. 295, 296.
714(b)	37:364 (less proviso).	
714(c)	37:363 (less last sentence).	
714(d)	37:363 (last sentence).	

In subsection (a), the definition of the term "Department", in 37:361, is omitted as unnecessary, since the particular departments referred to are spelled out in the revised text. The definition of the term "uniformed services", in 37:361, is omitted as covered by the word "member" in this revised section. Clauses (1)–(6) are substituted for the last 5 clauses of 37:362. The words "regulations to be prescribed by the Secretary concerned" are substituted for the words "regulations of the Department concerned", since the "Department", as such, cannot issue regulations.

In subsection (a)(2), the words "Surviving spouse" are substituted for the words "widow or widower". As defined in section 101(18) of this title, "spouse" includes a widower.

In subsection (b), the words "are subject to" are substituted for the words "shall be made under".

In subsection (c), the word "Under" is substituted for the words "Subject to". The words "rules and" are omitted as surplusage.

AMENDMENTS

1961—Subsec. (c). Pub. L. 87–46 substituted "Payment under clause (6) of subsection (a) shall be made—

"(1) upon settlement by the General Accounting Office; or

"(2) as otherwise authorized by the Comptroller General" for "Payments under clauses (2)–(6) of subsection (a) may be paid only after settlement by the General Accounting Office."

DESIGNATION OF BENEFICIARY MADE BEFORE JANUARY 1, 1956

Designation of beneficiary made before Jan. 1, 1956, considered as the designation of a beneficiary for the purposes of this section, see note set out under section 2771 of Title 10, Armed Forces.

§ 715. Property loss; personal injury or death: activities under certain sections of this title

(a) Under such regulations as the Secretary of the Army or Secretary of the Air Force may prescribe, he or, subject to appeal to him, the Judge Advocate General of the armed force under his jurisdiction, if designated by him, may settle and pay in an amount not more than $25,000 a claim against the United States for—

(1) damage to, or loss of, real property, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property, including property bailed to the United States or the National Guard and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the National Guard; or

(3) personal injury or death; either caused by a member of the Army National Guard or the Air National Guard, as the case may be, while engaged in training or duty under section 316, 502, 503, 504, or 505 of this title or any other provision of law for which he is entitled to pay under section 206 of title 37, or for which he has waived that pay, and acting within the scope of his employment; or otherwise incident to noncombat activities of the Army National Guard or the Air National Guard, as the case may be, under one of those sections.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of title 10 or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or a person employed under

section 709 of this title, whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee, or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and end of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States or of any State or the District of Columbia or Puerto Rico.

(d) If the Secretary of the military department concerned considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by this section, he may pay the claimant $25,000 and report the excess to Congress for its consideration.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) In any case where the amount to be paid is not more than $5,000, the authority contained in subsection (a) may be delegated to any officer of the Army or the Air Force, as the case may be, who has been delegated authority under section 2733(g) of title 10, to settle similar claims, subject to appeal to the Secretary concerned, or his designee for that purpose.

(g) Notwithstanding any other provision of law, the settlement of a claim under this section is final and conclusive.

(h) In this section, "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or disallowance.

(Added Pub. L. 86-740, § 1(1), Sept. 13, 1960, 74 Stat. 878, and amended Pub. L. 87-649, § 8(b), Sept. 7, 1962, 76 Stat. 495; Pub. L. 90-486, § 2(3), Aug. 13, 1968, 82 Stat. 756; Pub. L. 90-525, § 6, Sept. 26, 1968, 82 Stat. 878; Pub. L. 91-312, § 3, July 8, 1970, 84 Stat. 412; Pub. L. 92-445, Sept. 29, 1972, 86 Stat. 745; Pub. L. 93-336, § 3, July 8, 1974, 88 Stat. 292.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-336, § 3(1), substituted "$25,000" for "$15,000".

Subsec. (d). Pub. L. 93-336, § 3(2), substituted "$25,000" for "$15,000" wherever appearing.

Subsec. (f). Pub. L. 93-336, § 3(3), substituted "$5,000" for "$2,500".

1972—Subsec. (b)(4). Pub. L. 92-445 added provision that the claim may be allowed to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under similar circumstances, when the damage to or loss of property, or personal injury or death was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee.

1970—Subsec. (a). Pub. L. 91-312, § 3(a), substituted "$15,000" for "$5,000".

Subsec. (d). Pub. L. 91-312, § 3(b), substituted "$15,000" for "$5,000".

1968—Subsec. (a). Pub. L. 90-486 struck out "caused by a person employed under section 709 of this title acting within the scope of his employment;" following "acting within the scope of his employment;".

Subsec. (f). Pub. L. 90-525 increased the limitation on amount of settlement from $1,000 to $2,500 and provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of the Army or the Air Force.

1962—Subsec. (a). Pub. L. 87-649 substituted "section 206 of title 37" for "section 301 of title 37" in cl. (3).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-486 effective Jan. 1, 1968, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90-486, set out as an Effective Date of 1968 Amendment note under section 709 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SAVINGS PROVISIONS FOR CLAIMS ARISING BEFORE JANUARY 1, 1969

Settlement and payment of claims arising under this section before January 1, 1969, see section 3(a) of Pub. L. 90-486, set out as a note under section 709 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 334 of this title; title 10 section 2736.

§ 716. Claims for overpayment of pay and allowances, other than travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances, other than travel and transportation allowances, made before or after the effective date of this section, to or on behalf of a member or former member of the National Guard, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Comptroller General; or

(2) the Secretary concerned, as defined in section 101(5) of title 37, when—

(A) the claim is in an amount aggregating not more than $500;

(B) the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official; and

(C) the waiver is made in accordance with standards which the Comptroller General shall prescribe.

(b) The Comptroller General or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other

person having an interest in obtaining a waiver of the claim; or

(2) if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment of pay or allowances, other than travel and transportation allowances, was discovered.

(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the department concerned at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that department for that refund within two years following the effective date of the waiver. The Secretary concerned shall pay from current applicable appropriations that refund in accordance with this section.

(d) In the audit and settlement of accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous payment, the collection of which is waived under this section, is considered a valid payment for all purposes.

(f) This section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.

(Added Pub. L. 92–453, § 2(1), Oct. 2, 1972, 86 Stat. 759.)

REFERENCES IN TEXT

Effective date of this section, referred to in subsec. (a), means the effective date of Pub. L. 92–453, which was approved Oct. 2, 1972.